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August 23, 2018

VIA ELECTRONIC FILING

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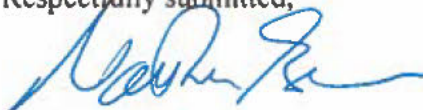
Re: Request for Review by Windstream Communications, LLC of Decision by the Universal Service Administrator

Dear Ms. Dortch:

Windstream Communications, LLC ("Windstream") submits the enclosed Request for Review of a decision by the Universal Service Administrator pursuant to Sections 54.719(b) and 54.722 of the Commission's rules. Certain information in Exhibit D to the Request for Review has been redacted from this public filing. Windstream is filing an unredacted version of the Request for Review under separate cover along with a request for confidential treatment.

Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,



Matthew A. Brill
Elizabeth R. Park
of LATHAM & WATKINS LLP

Enclosure

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Health Care Program)	WC Docket No. 02-60
)	
Request for Review by Windstream)	Application Nos. and Funding
Communications, LLC of Decision by the)	Request Nos. listed in Exhibit A
Universal Service Administrator)	
)	
)	

REQUEST FOR REVIEW

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August 23, 2018

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)	
)	

REQUEST FOR REVIEW

Pursuant to sections 54.719(b) and 54.722 of the Commission’s rules,¹ Windstream Communications, LLC (“Windstream”) hereby respectfully requests that the Commission review the decisions of the Universal Service Administrative Company (“USAC”) denying funding under the Universal Service Rural Health Care Telecommunications Program (“Telecom Program”) and seeking recovery of funding from Windstream for the Funding Request Numbers (“FRNs”) identified in Exhibit A.²

INTRODUCTION AND SUMMARY

This request for review stems from USAC’s decision to deny Telecom Program funding for Funding Years 2012-2016 and to seek recovery from Windstream as the service provider. USAC determined that there was a conflict of interest that prevented the competitive bidding process from being “fair and open,” notwithstanding the absence of any such requirement under the rules applicable to the Telecom Program. In any event, there is no evidence that the competitive bidding process was tainted in any way. Indeed, the undisputed record demonstrates

¹ 47 C.F.R. §§ 54.719(b), 54.722.

² See Exhibit A.

that Windstream did not violate any competitive bidding rules applicable during the Funding Years—or any currently applicable rules, for that matter. Windstream’s investigation of the relevant facts determined that the company was unaware that ABS Telecom, LLC (“ABS”) and its principal, Gary Speck, provided consulting services to RHC applicants while acting as a sales agent for Windstream and other service providers. But even if Windstream had been aware of the conflict of interest, it did not commit any rule violation and thus should not be penalized under well-established precedent. It would be wholly inequitable, and arbitrary and capricious, to hold Windstream responsible for the actions of third parties, particularly in the absence of prejudice to the Telecom Program. In the alternative, a waiver of the competitive bidding rules is justified in this case because the outcome of the competitive bidding process was not affected, and it would be manifestly unjust to deprive Windstream of funding for the services it provided. Particularly because Windstream acted as a reseller of circuits obtained at substantial expense from third parties, depriving Windstream of just compensation for those out-of-pocket costs would cause an unconstitutional taking.

QUESTIONS FOR REVIEW

USAC has denied funding for services provided by Windstream under the RHC Telecom Program and has sought recovery of funds directly from Windstream pursuant to the Commitment Adjustment (“COMAD”) Letters at issue. Windstream filed timely requests for review by USAC of these decisions, and USAC has denied Windstream’s appeals.³ Accordingly, Windstream is a “party aggrieved” by USAC’s action and is entitled to seek review by the Commission.⁴

³ See USAC, Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2015 (June 29, 2018) (Exhibit B); USAC, Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2016 (June 29, 2018) (Exhibit C).

⁴ See 47 C.F.R. § 54.719(b).

The questions presented for review⁵ are as follows:

- (1) Whether the decision to deny funding in this case is an arbitrary and capricious application of the “fair and open” standard and other requirements for the competitive bidding process not currently contained in the Telecom Program rules;
- (2) Whether Windstream, as the service provider, can be held responsible for an alleged conflict of interest caused by third parties; and
- (3) Whether constitutional and equitable considerations warrant the restoration of funding, including, to the extent necessary, through the grant of a waiver of the competitive bidding rules.

While this appeal naturally focuses on the impact of USAC’s legal errors on Windstream, it also bears emphasis that the approach taken by USAC, if not reversed by the Commission, would result in an undue and unjustified hardship on rural hospitals. The imposition of strict liability for an alleged violation of competitive bidding rules would deter other service providers from competing to serve Telecom Program customers. At a minimum, these equitable considerations justify a waiver if the Commission decides to uphold USAC’s finding of a rule violation, particularly given the absence of evidence that ABS and Mr. Speck’s dual role had any impact on the competitive bidding process.

Therefore, Windstream respectfully requests that the Commission grant its request for review and direct USAC to restore funding for the above-captioned funding requests.⁶

STATEMENT OF FACTS

Windstream’s request for review arises from USAC’s June 29, 2018 decisions denying Windstream’s appeals of USAC’s determination to deny funding under the Telecom Program for

⁵ *See id.* § 54.721(b)(3).

⁶ Windstream notes that, during the pendency of this appeal, Windstream cannot be deemed delinquent for any failure to pay any outstanding balance associated with this dispute. *See* 47 C.F.R. § 1.1910(b)(3)(i).

Funding Years 2012-2016 for the FRNs identified in Exhibit A and USAC's subsequent issuance of COMAD Letters for Funding Years 2012-2015.⁷

On March 15, 2011, Windstream executed a channel partner agreement with ABS, under which ABS acted as a sales agent in identifying business opportunities for Windstream.⁸ This contract established Windstream's relationship with ABS and Mr. Speck, owner and manager of ABS.⁹ At all relevant times, the operative agreement between Windstream and ABS required ABS to comply with all applicable laws, including the FCC's rules and regulations.¹⁰ Between 2012 and 2015, Windstream, through ABS, executed contracts as a result of a competitive bidding process to provide services to the University of Texas Health Science Center ("UTHSC") health care providers with the FRNs listed in Appendices A-C of USAC's March 13, 2017 Decision Letter.¹¹ Windstream in turn entered into agreements with other local telecommunications service providers to obtain high-capacity circuits for resale to the health care providers.¹²

USAC committed funding under these contracts for Funding Years 2012-2016, and Windstream received funds for Funding Years 2012-2014, as well as a portion of the funds committed for Funding Year 2015. In February 2016, during discussions between Windstream and UTHSC regarding a potential bid to provide service under a new contract, Windstream's personnel responsible for managing participation in universal service programs discovered that ABS may have been acting as a consultant for UTHSC while serving as Windstream's channel

⁷ See Exhibit A.

⁸ Decl. of Tim Loken ¶ 4.

⁹ *Id.*

¹⁰ *Id.* at ¶ 5.

¹¹ *Id.* at ¶ 6; *see also* Exhibit A (listing FRNs at issue).

¹² Decl. of Tim Loken ¶ 6.

partner.¹³ Windstream undertook an internal investigation regarding the nature of ABS and Mr. Speck's role in connection with the UTHSC contracts, which revealed that Mr. Speck was indeed acting as a consultant for UTHSC in connection with the bid, along with his wife and business partner, Amy Speck.¹⁴ After Windstream's representative informed Mr. Speck of Windstream's concerns regarding ABS's dual role, Mr. Speck told Windstream via a telephone conversation that USAC approved his dual role as consultant to health care providers and channel partner to service providers sometime in 2010 or 2011. Mr. Speck later informed Windstream that he could not provide documentation regarding this purported approval from USAC.¹⁵

Mrs. Speck subsequently formed CFT Filings, LLC ("CFT") in an apparent attempt to remedy any conflict of interest. Mr. Speck later represented to Windstream that ABS was going to divest itself of the consulting role for health care providers participating in the Telecom Program and transfer that role to CFT.¹⁶ After an internal investigation and allowing Mr. Speck a reasonable amount of time to produce documentation to support his assertions that USAC had approved his dual role, Windstream determined that Mr. Speck was in breach of his channel partner agreement. Windstream notified Mr. Speck on April 19, 2016 that it was terminating its agreement with ABS.¹⁷

On May 18, 2016, counsel for Mr. Speck formally asked Windstream to rescind the termination of the agreement on the grounds that Mr. and Mrs. Speck planned to transfer ownership

¹³ Decl. of Tim Loken ¶ 7.

¹⁴ *Id.* at ¶ 8.

¹⁵ *Id.*

¹⁶ *Id.* at ¶ 9.

¹⁷ *Id.* at ¶ 10.

of CFT to a third party.¹⁸ On May 31, 2016, counsel for ABS provided documentation showing that in March 2016, UTHSC authorized CFT to act on its behalf before USAC in matters relating to the Telecom Program for Funding Years 2015-2018.¹⁹ ABS also provided Certificates of Formation and Amendment for CFT and ABS, showing that Mrs. Speck transferred CFT on May 12, 2016 to Warren Lai, making him sole owner and sole managing member.²⁰ ABS asserted that, following transition of the business to CFT, it would maintain no relationship to CFT.²¹ ABS also informed Windstream that it served as a sales agent not only to Windstream, but to other service providers in the relevant service areas capable of completing bids, and that ABS provided the same information to each service provider.²² Windstream did not rescind the termination of the ABS agreement.

Subsequently, USAC commenced an audit of charges related to funding requests by UTHSC. Windstream cooperated fully with the audit, including by providing information regarding its costs of obtaining circuits for resale to UTHSC and the commission payments it made to ABS.²³

On March 13, 2017, USAC denied funding under the Telecom Program in connection with certain FCC Form 465 Application Numbers for Funding Years 2012-2016, alleging that ABS and Mr. Speck's dual role violated the Commission's competitive bidding rules.²⁴ On October 20 and

¹⁸ *Id.* at ¶ 11.

¹⁹ *Id.* at ¶ 12.

²⁰ *See id.*

²¹ *See id.*

²² *Id.* at ¶ 13.

²³ *See* Windstream Responses to Dec. 23, 2016 Data Request (Exhibit D).

²⁴ *See* USAC, Administrator's Decision on Rural Health Care Program Appeal – Funding Years 2012-2016, at 1 (June 29, 2018) (Exhibit C).

23, 2017, USAC issued COMAD Letters adjusting funding awards for Funding Years 2012-2015 in connection with funding of services to the UTHSC health care providers.²⁵ Windstream submitted timely appeals of both the March 2017 funding denial and the October 2017 COMAD letters.²⁶ On June 29, 2018, USAC denied both appeals.

ARGUMENT

USAC’s denial of Windstream’s appeals improperly relies on the purported requirement of “fair and open” competitive bidding, despite the absence of any such requirement for the Telecom Program, and despite that any such requirement would have applied to the applicants for funding, not Windstream. Moreover, even if the “fair and open” competitive bidding requirements had applied to Windstream during the 2012-2016 timeframe, there is no evidence that Windstream violated those requirements. Equitable and constitutional considerations also weigh heavily against requiring Windstream to forgo funding under the Telecom Program, or alternatively support granting a waiver of the competitive bidding rules.

I. The FCC’s “Fair and Open” Competitive Bidding Rules Do Not Apply to the Telecom Program

As a threshold matter, USAC improperly seeks to enforce requirements that do not apply to participants in the Telecom Program. On December 18, 2017, the Commission released a Notice of Proposed Rulemaking (“NPRM”) that sought comment on adding a “fair and open” competitive bidding standard to the rules governing the Telecom Program.²⁷ Currently, that standard applies

²⁵ See USAC, Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2015, at 1 (June 29, 2018) (Exhibit B).

²⁶ See USAC, Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2015 (June 29, 2018) (Exhibit B); USAC, Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2016 (June 29, 2018) (Exhibit C).

²⁷ See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking, FCC 17-164, ¶ 100 (rel. Dec. 18, 2017) (“NPRM”).

only to the Healthcare Connect Fund (“HCF”) and the Schools and Libraries (“E-Rate”) Programs. The NPRM also sought comment on establishing “well-defined boundaries” for consultants in connection with the Telecom Program.²⁸ Notably, the Commission adopted such rules for the HCF Program in 2012 but did *not* extend those requirements or limitations to the Telecom Program rules at that time.²⁹ Indeed, the Commission stated explicitly that it was not making any changes to the rules and procedures for the Telecom Program.³⁰ The Commission’s proposal to adopt new rules for the Telecom Program constitutes an acknowledgement that the current Telecom Program rules do not address such standards and requirements that apply to other universal service programs.

Thus, the currently pending rulemaking proceeding evaluating the competitive bidding standard and the role of consultants in the Telecom Program undermines USAC’s assertion that, at the time Windstream entered into a channel partner arrangement with ABS and participated in the bidding processes in question, the parties in this case had sufficient notice regarding the standards and requirements USAC is seeking to enforce relating to the use of consultants in the competitive bidding process. On this point, USAC relies on a 2016 Commission decision—i.e., a case decided *after* the relevant events occurred—to assert that Windstream should have been aware that the fair and open competitive bidding requirements from the HCF and E-Rate programs also applied to the Telecom Program for Funding Years 2012-2016.³¹ Tellingly, all other precedent

²⁸ *Id.* ¶ 87.

²⁹ *See Rural Health Care Support Mechanism*, Report and Order, 27 FCC Rcd 16678 (2012).

³⁰ *See id.* at 16814-15.

³¹ *See* USAC, Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2015, at 6 (June 29, 2018) (Exhibit B); USAC, Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2016, at 2-3 & n.4 (June 29, 2018) (Exhibit C) (citing *Requests for Review of Decisions of the Universal Service Administrator by Hospital*

cited in USAC’s decisions addressed only E-Rate program requirements, highlighting the absence of any such precedent applicable to the Telecom Program and the lack of notice to Windstream of the Commission’s apparent change in policy regarding the Telecom Program.³²

In short, USAC’s attempt to enforce requirements embodied in the “fair and open” standard and other competitive bidding requirements that do not currently apply to the Telecom Program—and, critically, did not apply during the time frame relevant to the COMADs—is arbitrary and capricious. USAC’s decision, if upheld, also would violate due process and the prohibition against retroactive application of rules.³³

II. Windstream Cannot Be Held Responsible for an Alleged Conflict of Interest Caused by Third Parties

Even if the “fair and open” competitive bidding requirements were applicable to the Telecom Program in connection with the bidding processes relevant here, USAC had no basis to seek recovery of funding from Windstream based on the dual role played by ABS and Mr. Speck. USAC determined that ABS and Mr. Speck created a conflict of interest by providing consulting services to RHC participants while acting as a sales agent for Windstream and other service providers. However, Windstream disagrees with USAC’s finding that Windstream was aware of

Networks Management, Inc. Manchaca, Texas, Order, 31 FCC Rcd 5731, 5733, ¶ 4 (WCB 2016)).

³² See, e.g., USAC Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2015, at 2-3 n.10 (June 29, 2018) (Exhibit B) (citing *Request for Review by Mastermind Internet Services, Inc.*, Order, 16 FCC Rcd 4028 (2000); *Request for Review by Dickenson County Public Schools*, Order, 17 FCC Rcd 15747, 15748, ¶ 3 (2002); *Requests for Review of Decision of the Universal Service Administrator by SEND Technologies, L.L.C.*, Order 22 FCC Rcd 4950, 4951, ¶ 3 (2007)); USAC, Administrator’s Decision on Rural Health Care Program Appeal – Funding Years 2012-2016, at 2-3 n.10 (June 29, 2018) (Exhibit C) (same).

³³ See, e.g., *General Elec. Co. v. United States EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (holding that due process requires an agency to provide “fair notice” prior to depriving parties of property); see also *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (holding that a statutory grant of legislative rulemaking authority does not “encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms”).

facts surrounding the conflict of interest at the time the bid was submitted.³⁴ USAC appears to hold Windstream to a constructive notice standard, arguing that because Windstream had a channel partnership agreement with ABS, and Mr. Speck was listed as the contact person on the UTHSC applicants' FCC Forms 465, Windstream was constructively on notice of ABS and Mr. Speck's dual role. Windstream's supporting declaration confirms that Windstream lacked actual knowledge of the conflict at the time of the competitive bidding processes. Further, as soon as Windstream management learned of ABS and Mr. Speck's dual role, Windstream terminated the channel partner agreement with ABS.

In all events, even if some employees within Windstream may have had constructive (or even actual) knowledge of ABS's dual role before that time, the company was not responsible for any conflict of interest. The Telecom Program rules—and even the proposed rules that the Commission is now considering adopting for the Telecom Program—confirm that Windstream did not violate any competitive bidding requirements. With respect to the existing rules, Section 54.603, which governs competitive bidding, by its terms applies only to the health care provider *applicant*—not to a vendor such as Windstream.³⁵ As noted above, although the Commission is now proposing to adopt fair and open competitive bidding requirements that would apply more broadly to all participants in the program, including service providers, there is no such rule in place today, and there certainly was no such rule during the time period addressed in USAC's denial of Windstream's appeals.

³⁴ See USAC, Administrator's Decision on Rural Health Care Program Appeal – Funding Years 2012-2015, at 7 (June 29, 2018) (Exhibit B).

³⁵ See 47 C.F.R. § 54.603(a) (“To select the telecommunications carriers that will provide services eligible for universal service support to it under the Telecommunications Program, *each eligible health care provider* shall participate in a competitive bidding process pursuant to the requirements established in this section and any additional and applicable state, Tribal, local, or other procurement requirements.”) (emphasis added).

Moreover, even if the proposed new “fair and open” competitive bidding rules could be applied retroactively—and they cannot³⁶—they still would not justify depriving Windstream of funding based on the dual role played by ABS and Mr. Speck. The HCF Program rule that the Commission proposes to extend to the Telecom Program requires *applicants* to identify any consultants assisting with the competitive bidding process; it does not impose any such duty on *service providers*.³⁷ And to the extent the HCF rules do impose requirements on service providers, Windstream’s conduct here would not run afoul of any of those requirements, either. For example, under the HCF program, a vendor “who intend[s] to bid on supported services ... may not simultaneously help the health care provider choose a winning bid.”³⁸ Nor may a vendor that submits a bid: prepare, sign, or submit an applicant’s request for services; serve as a consortium leader or other point of contact on behalf of an applicant; participate in setting bid evaluation criteria or the vendor selection process.³⁹ USAC does not assert that Windstream committed any such violations; nor could it, as Windstream had absolutely no involvement in the applicants’ preparation of RFPs, evaluation of bids, or vendor selection.

The Commission’s adjudicatory orders further support the conclusion that Windstream cannot be held liable for the conflict of interest alleged with respect to ABS and Mr. Speck. The Commission has consistently held that “recovery actions should be directed to the party or parties that committed the rule or statutory violation in question,”⁴⁰ and the Wireline Competition Bureau

³⁶ See *supra* n. 33.

³⁷ NPRM ¶ 87.

³⁸ 47 C.F.R. § 54.642(b)(2).

³⁹ *Id.*

⁴⁰ *Federal-State Joint Board on Universal Service*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, ¶ 10 (2004) (“*Schools and Libraries Fourth Report and Order*”).

(“WCB”) has applied this principle in the context of the Telecom Program as well as the E-Rate program.⁴¹

In the 2016 HNM Order that USAC cites, for example, WCB granted Verizon’s request for review of USAC’s decision to seek recovery from Verizon of funds awarded under the RHC program in violation of the competitive bidding rules, based on a determination that Verizon was not responsible for the rule violation.⁴² In that case, Hospital Networks Management, Inc. (“HNM” d/b/a THN) and its president/owner, Mr. Randall Zunke, served as consultants to the Texas Hospital Telecommunications Alliance (“Alliance”), a consortium of health care providers, in connection with the RHC program. In his role as a consultant to the Alliance members, Mr. Zunke served as the “contact person and authorized signatory for each of the consortium members’ FCC Forms 465, 466, and 466-A.”⁴³ HNM (headed by Mr. Zunke) entered into contracts on the consortium members’ behalf with several service providers.⁴⁴ At the same time, THN (an alternative name for HNM) also entered into service agreements with each consortium member using the contracts negotiated by HNM.⁴⁵ USAC determined that there was a conflict of interest because THN held itself out as a service provider to the consortium members, while THN’s president served as a consultant to the Alliance and signed FCC Forms 465 on their behalf.⁴⁶

⁴¹ See *Requests for Review of Decisions of the Universal Service Administrator by Hospital Networks Management, Inc. Manchaca, Texas*, Order, 31 FCC Rcd 5731 (WCB 2016) (“*HNM Order*”); *Requests for Review of Decisions of the Universal Service Administrator by BellSouth Telecomms., Inc./Union Parish School Bd.*, Order, 27 FCC Rcd 11208 (WCB 2012) (“*BellSouth Order*”).

⁴² *HNM Order*, 31 FCC Rcd at 5742-43, ¶ 22.

⁴³ *Id.* at 5734-35, ¶ 6.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 5735-36, ¶ 7.

USAC rescinded RHC funds and sought to recover the funds from THN and the service providers, including Verizon.⁴⁷

Although WCB upheld USAC's determination that a conflict of interest was present, the Bureau granted Verizon's request for review of USAC's decision to seek recovery from the service provider.⁴⁸ The Bureau held that USAC erred because there was "no evidence in the record suggesting that Verizon violated the Commission's competitive bidding requirements," and it accordingly directed USAC to discontinue its recovery efforts against Verizon.⁴⁹

The same principles should govern here. While USAC alleges that ABS and Mr. Speck created a conflict of interest that may have caused UTHSC to violate the competitive bidding rules, there is no evidence here—as with the very similar HNM/THN conflict—that Windstream was responsible for any violation of the Commission's competitive bidding requirements. Any effort to recover funds from, or to deny committed funding to, Windstream for services it provided in good faith therefore would be improper.

Similarly, in WCB's *BellSouth Order*, the Bureau held that "USAC erroneously sought recovery from BellSouth for violations committed by Union Parish and Send."⁵⁰ The underlying conflict of interest in that case (which had been discussed in a prior Order⁵¹), stemmed from the dual role of a Union Parish School Board employee, who both acted as the designated contact for

⁴⁷ *Id.* at 5736-37, ¶ 8.

⁴⁸ *Id.* at 5742, ¶ 22.

⁴⁹ *Id.*

⁵⁰ *BellSouth Order*, 27 FCC Rcd at 11210, ¶ 3.

⁵¹ See *Review of the Decision of the Universal Service Administrator by SEND Technologies, L.L.C.*, Order, 22 FCC Rcd 4950 (WCB 2007) ("*SEND Order*").

Union Parish in connection with its E-Rate program filings and owned a 15 percent interest in Send Technologies, the service provider that won the bid.⁵²

Again, the facts are comparable here: USAC has characterized the dual role played by ABS and Mr. Speck as improper, but that does not justify imposing vicarious liability on Windstream, given the absence of any evidence that Windstream was responsible for any conflict of interest while bidding on the contracts in question. Indeed, far from being responsible for any alleged conflict of interest, Windstream took steps to ensure that its contract with ABS included a representation that ABS was in compliance with all applicable laws, as well as a commitment that it would remain in compliance. In such circumstances, Commission precedent holds that Windstream should not be held liable to repay previously disbursed funding or denied committed funding.⁵³

In contrast, USAC cites the *SEND Order* as supporting recovery of previously disbursed funds; that case involved parties that were (unlike Windstream) responsible for a conflict of interest and knowingly engaged in the acts deemed prohibited by the Commission's competitive bidding rules. As described above with respect to the *SEND Order*, a school board's employee acted as the designated contact for the school board in connection with its E-Rate program filings while having an ownership interest in the service provider.⁵⁴ Accordingly, WCB directed that USAC seek recovery from the school board, the employee, and the service provider partially owned by the employee.⁵⁵ Here, by contrast, Windstream was not acting in a dual role, nor is there any evidence that UTHSC improperly ceded control of the bidding process to Windstream, as

⁵² *Id.* at 4952-53, ¶ 6.

⁵³ *See HNM Order*, 31 FCC Rcd at 5742-43, ¶ 22; *BellSouth Order*, 27 FCC Rcd at 11210, ¶ 3.

⁵⁴ *SEND Order*, 22 FCC Rcd at 4952-3, ¶ 6.

⁵⁵ *Id.* at 4954, ¶ 10.

distinct from ABS (which represented multiple service providers and had only an arm's length relationship with Windstream).

The other case cited by USAC to support seeking recovery from Windstream as the service provider as a result of a conflict of interest is similarly inapposite.⁵⁶ In the *Achieve Telecom Network* case, the Commission found that the service provider “unlawfully funded the Schools’ co-payment for E-rate services through its *de facto* control of grants to the Schools . . .” to cover the school’s non-discounted share of the E-Rate eligible services.⁵⁷ Significantly, the Commission found that the service provider violated the E-Rate rules because it facilitated additional funding outside of the E-Rate program to cover non-discounted amounts, which is prohibited by Section 54.523 of the Commission’s rules.⁵⁸ In addition, in that case, the Commission held that “these grants gave Achieve an unfair advantage during the Schools’ competitive bidding processes.”⁵⁹ There is no allegation here, much less evidence, that Windstream gave money to the UTHSC health care providers; nothing of the sort occurred. Further, there is no allegation or evidence that Windstream in fact received any advantage in the competitive bidding processes as a result of ABS and Mr. Speck’s dual role. To the contrary, the record shows that there was no other bidder for the contracts at issue.⁶⁰

⁵⁶ *Requests for Review of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC*, Order, 30 FCC Rcd 3653 (WCB 2015).

⁵⁷ *Id.* at 3654 ¶ 2.

⁵⁸ *See id.* at 3669-70 ¶¶ 23-24; *see also* 47 C.F.R. § 54.523.

⁵⁹ *Id.* at 3654 ¶ 2.

⁶⁰ *See* The Burke Center – West Austin Street, Trinity Valley Community College, and UTHSC on behalf of the ETHIN – Andrews Center Request for Review of a Decision of the Universal Service Administrator, CC Docket No. 02-60, Request for Review, at 4-5 (filed May 12, 2017) (Exhibit E).

III. Constitutional and Equitable Considerations Militate Against Depriving Windstream of Funding

As discussed above, recovering funding from ABS or the applicant as allowed under the Telecom Program rules based on the conflict of interest at issue would assign responsibility appropriately for any rule violation and conform to Commission precedent. In contrast, requiring Windstream to forgo funds that were awarded under the Telecom Program would present a serious risk of causing an unconstitutional taking. It is a cardinal principle of administrative regulation that rates should not be confiscatory.⁶¹ Here, USAC granted funding applications for Windstream to provide service to the health care providers, and Windstream reasonably relied on USAC's grants and incurred significant out-of-pocket costs to fulfill its contractual obligations to the providers. Retroactively depriving Windstream of the promised funding—particularly absent evidence that Windstream was responsible for any conflict of interest or rule violations—would amount to a confiscation of property without just compensation.⁶²

Basic principles of equity also militate against any effort to withhold or claw back funding based on the conduct of a third party. Windstream relied on the funding commitments in procuring high-capacity circuits from third-party carriers and otherwise incurring costs to enable the provision of essential communications services to UTHSC. Windstream acted in good faith in submitting bids to the health care providers and in providing the contracted services. Punishing Windstream in such circumstances—particularly where the Commission would be changing its policy regarding its interpretation of the competitive bidding requirements applicable to the

⁶¹ See, e.g., *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

⁶² See, e.g., *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 481-82 (2002) (describing constitutional limits that prevent utilities from being deprived of cost recovery); *Vaqueria Tres Monjitas, Inc. v. Laboy*, No. 04-1840 (DRD), 2007 WL 7733665, at *38 (D.P.R. July 13, 2007) (finding dairy regulatory scheme to cause a taking by not allowing milk processors “to recover their true costs and the allowance of a fair profit”).

Telecom Program, and would be disregarding established precedent holding that service providers should not be responsible for the independent actions of consultants—would be arbitrary and capricious.⁶³

Alternatively, to the extent the Commission finds that ABS and Mr. Speck violated the FCC’s rules and such violation requires rescission of the funding awards to UTHSC and Windstream, waiver of the rules is appropriate.⁶⁴ The Commission has granted waivers of competitive bidding requirements in the context of universal service funds where (i) competitive bidding processes were not compromised by technical rule violations, and (ii) the outcome of the vendor selection processes was otherwise consistent with the policy goals underlying the Commission’s competitive bidding rules.⁶⁵ As discussed above, both criteria are met in this case. Windstream was the only service provider to submit a bid to serve UTHSC. The process was in fact fair and open, and the outcome of the bidding process was the selection of the only bid that was submitted. The principal cost of Windstream’s services was determined based on third-party providers’ rates for circuits—over which Windstream had no control—and Windstream imposed its standard markup as a reseller.⁶⁶ Thus, there is simply no evidence to show that the competitive bidding dynamics led to a higher-than-standard profit margin for Windstream, and there is no

⁶³ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (requiring the Commission to “display awareness that it is changing position,” and to provide “good reasons” for doing so, rather than “simply disregard[ing] rules that are still on the books”); see also *Perez v. Mortgage Bankers Ass’n*, 135 S. Ct. 1199, 1209 (2015).

⁶⁴ See 47 C.F.R. § 1.3 (providing that the Commission has discretion to waive its rules “for good cause shown”).

⁶⁵ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Union Free School District Central Islip, NY*, Order, 29 FCC Rcd. 2715, ¶ 1 (WCB 2014); *Requests for Review of Decisions of the Universal Service Administrator by La Joya Independent School District La Joya, TX*, Order, 28 FCC Rcd. 7866, ¶ 4 (WCB 2013).

⁶⁶ See Decl. of Tim Loken ¶ 6.

justification to deny funding to or seek recovery from Windstream. For the same reasons, restoring funding in this case would not run counter to the Commission's goals of combating waste, fraud, and abuse.

To the contrary, a waiver would strongly promote the Commission's interest in ensuring that service providers retain incentives to participate in the Telecom Program without fear of being subjected to arbitrary, post hoc rescission of critical funding. Imposing a draconian, strict-liability penalty on service providers that have not intentionally or knowingly participated in any wrongdoing would discourage service providers from competing to serve RHC customers. Windstream never would have agreed to serve these customers if it understood that a third-party sales agent's misconduct could result in the disgorgement of universal service funds that Windstream obtained in good faith.

In all events, to the extent the Commission determines that the circumstances warrant any recovery from Windstream at all, the amount Windstream must refund should be tailored to the alleged violation of the competitive bidding rules. At most, USAC should seek recovery only of the limited amounts that could have been causally related to the alleged violation of the competitive bidding rules, rather than the entire funding awards. In no event should Windstream be deprived of its cost recovery. Critically, as noted above, the bulk of Windstream's costs in serving UTHSC were attributable to the cost of purchasing high-capacity circuits from other telecommunications providers, and there is no sound rationale for depriving Windstream of its ability to recover its out-of-pocket costs in connection with such circuits. Irrespective of any conflict of interest, neither Windstream nor ABS could have inflated those underlying circuit costs, because they were based on a third-party carrier's rates. It would be wholly inequitable and confiscatory for USAC to deprive Windstream of reimbursement for the costs of purchasing circuits from a third party,

particularly when Windstream did so in express reliance on the commitment of funding from the RHC program and would never have purchased those services for the benefit of the health care customers absent that commitment.

Under principles of equity, it would be entirely improper to deprive Windstream of compensation for the services it provided to UTHSC. Windstream's payments to ABS were equal to or less than the standard residual commission rate Windstream used for channel partners at the time.⁶⁷ Thus, while there is no evidence that Windstream paid ABS an inappropriate commission rate, the conflict alleged by USAC at most would make ABS's receipt of such payments improper. As the parties that knowingly established a dual role in the competitive bidding process, ABS and Mr. Speck are the only parties that could have improperly profited from the commission arrangement with Windstream. The specific circumstances of this case therefore justify limiting USAC's remedial focus to those parties.

CONCLUSION

For the foregoing reasons, Windstream respectfully urges the Commission to grant this request for review and to direct USAC to reinstate funding and to cease its recovery action against Windstream with respect to the FRNs listed in Exhibit A.

Respectfully submitted,

/s/
Matthew A. Brill
Elizabeth R. Park
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

⁶⁷ See Windstream Responses to Dec. 23, 2016 Data Request at 1 (Exhibit D) (providing Windstream's typical commission rate for channel partners).

August 23, 2018

CERTIFICATE OF SERVICE

I, Kayla Ernst, hereby certify that on August 23, 2018, I caused the foregoing to be served via first-class mail upon the following:

Universal Service Administrative Co.
Rural Health Care
Attn: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC 20005
(also emailed to RHC-appeals@usac.org)

Russell D. Lukas
Lukas Lafuria Gutierrez & Sachs LLP
8300 Greensboro Dr.
Suite 1200
Tysons, VA 22102

Counsel for ABS Telecom LLC and Gary Speck

Stephen J. Rosen
Levine, Blaszak, Block & Boothby, LLP
2001 L St., N.W., Suite 900
Washington, D.C. 20036

Counsel for University of Texas Health Science Center

/s/
Kayla Ernst

DECLARATION OF TIM LOKEN

I, Tim Loken, declare under penalty of perjury that the following is true and correct:

1. I am an employee of Windstream Communications, LLC ("Windstream"). Windstream is a telecommunications service provider that provides services under contract to residential, small business, and enterprise customers.

2. I serve as Director – Regulatory Reporting and have worked at Windstream for 28 years. I am responsible for the reporting of the Lifeline, Rural Health Care and High Cost USAC programs on behalf of Windstream, and am responsible for the various federal and state regulatory reporting requirements. I am a Certified Public Accountant and am an officer of the company.

3. This declaration is based on my personal knowledge and review of documents maintained in the ordinary course of business by Windstream. As to the records and information discussed in this declaration, I have gained knowledge of the information from the business records of Windstream which were made at or about the time of the events, and are recorded and maintained in the ordinary course of business by Windstream.

4. On or about March 15, 2011, Windstream executed a channel partner agreement with ABS Telecom, LLC ("ABS"), under which ABS acted as a sales agent in identifying business opportunities for Windstream. The execution of this contract established Windstream's relationship with Gary Speck, the owner and manager of ABS.

5. Throughout the duration of Windstream's relationship with ABS, the operative agreement required ABS to comply with all applicable laws, rules, and regulations, including the FCC's rules and regulations.

6. Between 2012 and 2015, Windstream successfully bid to provide telecommunications service to the University of Texas Health Science Center (“UTHSC”), a healthcare provider participating in the Universal Service Rural Health Care Telecommunications Program (“RHC program”) and executed contracts with UTHSC. In order to fulfill its contractual obligations to provide service to UTHSC locations, Windstream entered into agreements with certain other telecommunications service providers to obtain high-capacity circuits for resale to UTHSC. The principal cost of the services Windstream provided to UTHSC was determined based on the rates of such other carriers for circuits—over which Windstream had no control—and Windstream imposed its standard markup as a reseller.

7. On or around February 12, 2016, in the course of preparing for a potential bid to provide service under a new contract with UTHSC, Windstream management first discovered that ABS and Mr. Speck may have been acting in a consultant capacity for UTHSC while serving as Windstream’s channel partner. Windstream immediately undertook an internal investigation regarding the nature of ABS and Mr. Speck’s role in connection with the UTHSC contracts.

8. Windstream’s internal investigation revealed that Mr. Speck was acting as a consultant for UTHSC in connection with this bid, along with his wife and business partner, Amy Speck. A Windstream employee informed Mr. Speck of Windstream’s concerns regarding ABS’s dual role. Mr. Speck replied that USAC was aware of his dual role as consultant to health care providers and channel partner to service providers, and had approved this role via telephone conversation sometime in 2010 or 2011. Mr. Speck later informed Windstream that he could not provide documentation regarding this purported approval from USAC.

9. On or about February 24, 2016, Mrs. Speck formed CFT Filings, LLC (“CFT”). Mr. Speck represented to Windstream that ABS was going to divest itself of the consulting role for health care providers participating in the RHC program and transfer that role to CFT.

10. On April 19, 2016, after providing Mr. Speck with a reasonable amount of time to produce documentation to support his assertion that USAC had approved his dual role, Windstream determined that Mr. Speck was in breach of his channel partner agreement and notified Mr. Speck of its decision to terminate the agreement with ABS.

11. On May 18, 2016, counsel for Mr. Speck formally asked Windstream to rescind its termination of the agreement on the grounds that Mr. and Mrs. Speck planned to transfer ownership of CFT to a third party.

12. On May 31, 2016, counsel for ABS provided documentation showing that on March 1, 2016, UTHSC authorized CFT to act on its behalf before USAC in matters relating to the RHC program for Funding Years 2015-2018. ABS further asserted that, following transition of the business to CFT, it would maintain no relationship to CFT.

13. In its May 31, 2016 letter, ABS also informed Windstream that it served as a sales agent not only to Windstream, but to other service providers in the relevant service areas capable of completing the bids, and that ABS provided the same information to each service provider.

14. In May 2016, Windstream conducted an internal audit of its channel partners associated with health care customers to determine whether any other partner had a dual role with any applicant for USAC funding. This audit demonstrated that there were no such arrangements.

15. As of October 2016, Windstream leadership determined that Windstream will no

longer work with channel partners on new deals involving universal service support.

Executed on May 11, 2017
at 4001 Rodney Parham Rd
Little Rock, Arkansas



Tim Loken

Exhibit A to to Windstream Request for Review (Aug. 23, 2018)

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2012	26649	113152	12100281	Trinity Valley Community College
2012	26649	113152	12100321	Trinity Valley Community College
2012	26649	113152	12100381	Trinity Valley Community College
2012	26649	43123237	1210028	Trinity Valley Community College
2012	26649	43123237	1210032	Trinity Valley Community College
2012	26649	43123240	1210038	Trinity Valley Community College
2013	26649	113152	13320191	Trinity Valley Community College
2013	26649	43123237	1332019	Trinity Valley Community College
2014	26649	113152	14557881	Trinity Valley Community College
2014	26649	113152	14557931	Trinity Valley Community College
2014	26649	113152	14557961	Trinity Valley Community College
2014	26649	113152	14557971	Trinity Valley Community College
2014	26649	113152	14557981	Trinity Valley Community College
2014	26649	113152	14561241	Trinity Valley Community College
2014	26649	113152	14561251	Trinity Valley Community College
2014	26649	113152	14561261	Trinity Valley Community College

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2014	26649	113152	14569971	Trinity Valley Community College
2014	26649	113152	14569981	Trinity Valley Community College
2014	33149	43137856	14569991	The Burke Center - West Austin Street
2014	33149	43137856	14570001	The Burke Center - West Austin Street
2014	33149	43137856	14570011	The Burke Center - West Austin Street
2014	33149	43137856	14570021	The Burke Center - West Austin Street
2014	33149	43137856	14570031	The Burke Center - West Austin Street
2014	33149	43137856	14570041	The Burke Center - West Austin Street
2014	33149	43137856	14570051	The Burke Center - West Austin Street
2014	33149	43137856	14570061	The Burke Center - West Austin Street
2014	33149	43137856	14570071	The Burke Center - West Austin Street
2014	33149	43137856	14570081	The Burke Center - West Austin Street
2014	33149	43137856	14570101	The Burke Center - West Austin Street
2014	33149	43137856	14570111	The Burke Center - West Austin Street
2014	26649	113152	14626371	Trinity Valley Community College
2014	26649	113152	14626401	Trinity Valley Community College
2014	33149	43137856	14626441	The Burke Center - West Austin Street

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2014	33149	43137856	14626461	The Burke Center - West Austin Street
2014	33149	43137856	14656871	The Burke Center - West Austin Street
2014	33149	43144429	1456999	The Burke Center - West Austin Street
2014	33149	43144429	1457000	The Burke Center - West Austin Street
2014	33149	43144429	1457001	The Burke Center - West Austin Street
2014	33149	43144429	1457002	The Burke Center - West Austin Street
2014	33149	43144429	1457003	The Burke Center - West Austin Street
2014	33149	43144429	1457004	The Burke Center - West Austin Street
2014	33149	43144429	1457005	The Burke Center - West Austin Street
2014	33149	43144429	1457006	The Burke Center - West Austin Street
2014	33149	43144429	1457007	The Burke Center - West Austin Street
2014	33149	43144429	1457008	The Burke Center - West Austin Street
2014	33149	43144429	1457010	The Burke Center - West Austin Street
2014	33149	43144429	1457011	The Burke Center - West Austin Street
2014	33149	43144429	1462644	The Burke Center - West Austin Street
2014	33149	43144429	1462646	The Burke Center - West Austin Street
2014	33149	43144429	1465687	The Burke Center - West Austin Street

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2014	26649	43123240	1455788	Trinity Valley Community College
2014	26649	43123237	1455793	Trinity Valley Community College
2014	26649	43133868	1455796	Trinity Valley Community College
2014	26649	43133868	1455797	Trinity Valley Community College
2014	26649	43133868	1455798	Trinity Valley Community College
2014	26649	43133868	1456124	Trinity Valley Community College
2014	26649	43133868	1456125	Trinity Valley Community College
2014	26649	43144511	1456126	Trinity Valley Community College
2014	26649	43144511	1456997	Trinity Valley Community College
2014	26649	43144511	1456998	Trinity Valley Community College
2014	26649	43144511	1462637	Trinity Valley Community College
2014	26649	43144511	1462640	Trinity Valley Community College
2015	34447	43139560	15752031	UTHSCT on behalf of ETIHN - Andrews Center
2015	34447	43139560	15784081	UTHSCT on behalf of ETIHN - Andrews Center
2015	34447	43139560	15784091	UTHSCT on behalf of ETIHN - Andrews Center
2015	34447	43139560	15784101	UTHSCT on behalf of ETIHN - Andrews Center
2015	26649	113152	15784111	Trinity Valley Community College

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2015	26649	113152	15784131	Trinity Valley Community College
2015	26649	113152	15784141	Trinity Valley Community College
2015	26649	113152	15784151	Trinity Valley Community College
2015	26649	113152	15784161	Trinity Valley Community College
2015	26649	113152	15784171	Trinity Valley Community College
2015	26649	113152	15784181	Trinity Valley Community College
2015	26649	113152	15784191	Trinity Valley Community College
2015	26649	113152	15784201	Trinity Valley Community College
2015	26649	113152	15784211	Trinity Valley Community College
2015	33149	43144429	1580117	The Burke Center - West Austin Street
2015	33149	43144429	1580118	The Burke Center - West Austin Street
2015	33149	43144429	1580121	The Burke Center - West Austin Street
2015	33149	43144429	1580122	The Burke Center - West Austin Street
2015	33149	43144429	1580123	The Burke Center - West Austin Street
2015	33149	43144429	1580124	The Burke Center - West Austin Street
2015	33149	43144429	1580125	The Burke Center - West Austin Street
2015	33149	43144429	1580126	The Burke Center - West Austin Street

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2015	33149	43144429	1580127	The Burke Center - West Austin Street
2015	33149	43144429	1580128	The Burke Center - West Austin Street
2015	33149	43144429	1580129	The Burke Center - West Austin Street
2015	33149	43144429	1580130	The Burke Center - West Austin Street
2015	33149	43144429	1580131	The Burke Center - West Austin Street
2015	33149	43144429	1580132	The Burke Center - West Austin Street
2015	33149	43155674	1584689	The Burke Center - West Austin Street
2015	26649	43133868	1578411	Trinity Valley Community College
2015	26649	43133868	1578412	Trinity Valley Community College
2015	26649	43133868	1578413	Trinity Valley Community College
2015	26649	43133868	1578414	Trinity Valley Community College
2015	26649	43133868	1578415	Trinity Valley Community College
2015	26649	43144511	1578416	Trinity Valley Community College
2015	26649	43144511	1578417	Trinity Valley Community College
2015	26649	43144511	1578418	Trinity Valley Community College
2015	26649	43123237	1578419	Trinity Valley Community College
2015	26649	43123240	1578420	Trinity Valley Community College

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2015	26649	43155659	1578421	Trinity Valley Community College
2015	26649	43155659	1580115	Trinity Valley Community College
2015	34447	43155889	1575203	UTHSCT on behalf of ETIHN - Andrews Center
2015	34447	43155889	1578408	UTHSCT on behalf of ETIHN - Andrews Center
2015	34447	43155889	1578409	UTHSCT on behalf of ETIHN - Andrews Center
2015	34447	43155889	1578410	UTHSCT on behalf of ETIHN - Andrews Center
2015	34447	43155889	1584974	UTHSCT on behalf of ETIHN - Andrews Center
2015	26649	43155659	1578419	Trinity Valley Community College
2015	26649	43155659	1578420	Trinity Valley Community College
2016	33149	43144429	1697877	The Burke Center - West Austin Street
2016	33149	43144429	1697940	The Burke Center - West Austin Street
2016	33149	43144429	1697941	The Burke Center - West Austin Street
2016	33149	43144429	1697946	The Burke Center - West Austin Street
2016	33149	43144429	1697947	The Burke Center - West Austin Street
2016	33149	43144429	1697948	The Burke Center - West Austin Street
2016	33149	43144429	1697949	The Burke Center - West Austin Street
2016	33149	43144429	1697953	The Burke Center - West Austin Street

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2016	33149	43144429	1697954	The Burke Center - West Austin Street
2016	33149	43144429	1697958	The Burke Center - West Austin Street
2016	33149	43144429	1697959	The Burke Center - West Austin Street
2016	33149	43144429	1697960	The Burke Center - West Austin Street
2016	33149	43144429	1697961	The Burke Center - West Austin Street
2016	33149	43144429	1697963	The Burke Center - West Austin Street
2016	26649	43123237	1698106	Trinity Valley Community College
2016	26649	43133868	1698108	Trinity Valley Community College
2016	26649	43133868	1698110	Trinity Valley Community College
2016	26649	43133868	1698112	Trinity Valley Community College
2016	26649	43133868	1698118	Trinity Valley Community College
2016	26649	43133868	1698121	Trinity Valley Community College
2016	26649	43144511	1698125	Trinity Valley Community College
2016	26649	43144511	1698130	Trinity Valley Community College
2016	26649	43144511	1698134	Trinity Valley Community College
2016	26649	43155659	1698138	Trinity Valley Community College
2016	34447	43155889	1697880	UTHSCT on behalf of ETIHN - Andrews Center

Funding Year	Health Care Provider Number	FCC Form 465 Number	Funding Request Number	Health Care Provider
2016	34447	43155889	1698227	UTHSCT on behalf of ETIHN - Andrews Center
2016	34447	43155889	1698229	UTHSCT on behalf of ETIHN - Andrews Center
2016	34447	43155889	1698230	UTHSCT on behalf of ETIHN - Andrews Center
2016	34447	43155889	1698233	UTHSCT on behalf of ETIHN - Andrews Center

EXHIBIT B to
Windstream Request for
Review (Aug. 23, 2018)

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic and Certified Mail

June 29, 2018

Mr. Matthew A. Brill
Ms. Elizabeth R. Park
Latham & Watkins LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004

Cc: Ms. Amy Barnes
Windstream Communications, LLC
4001 Rodney Parham Rd, B1F01
Little Rock, AR 72212

Re: Windstream Communications - Appeal of USAC's
Decision for Funding Request Numbers Listed in Appendix A

Dear Mr. Brill:

The Universal Service Administrative Company (USAC) has completed its evaluation of the December 19, 2017 letter of appeal (Appeal) submitted on behalf of Windstream Communications, LLC (Windstream).¹ The funding request numbers (FRNs) that are the subject of the Appeal are listed in Appendix A, and they relate to funding under the federal Universal Service Rural Health Care Telecommunications Program (Telecom Program).

On October 23, 2017, USAC issued Commitment Adjustment Letters (COMADs) to Windstream, adjusting Telecom Program funding committed to The Burke Center –West Austin Street (Burke), Trinity Valley Community College (Trinity), and UTHSCT on behalf of ETIHN – Andrews Center (UTHSCT) (collectively, the Applicants), including recovery from Windstream of any funding improperly disbursed, for funding years (FYs) 2012 through 2015.² The Appeal requests that USAC reverse these funding adjustments.³

¹ See Letter from Matthew A. Brill and Elizabeth R. Park, Latham & Watkins LLP on behalf of Windstream Communications, LLC to Rural Health Care Division, USAC (Dec. 19, 2017) (Appeal).

² See Emails from Rural Health Care Division, USAC to Maribeth Everley, Windstream Communications, LLC (Oct. 23, 2017) (Administrator's COMADs) (adjusting the Applicants' commitments based on USAC's finding that the competitive bidding process that resulted in the selection of Windstream as the service provider for Applicants' funding requests was not fair and open, as required by the FCC).

³ See Appeal at 1.

Mr. Matthew A. Brill
Ms. Elizabeth R. Park
Latham & Watkins LLP
June 29, 2018
Page 2 of 14

USAC has reviewed the Appeal and the facts related to this matter and has determined that Federal Communications Commission (FCC or Commission) rules and requirements support the funding adjustments for the FRNs listed in Appendix A because the Applicants' selection of Windstream as the service provider for these funding requests was not the result of a fair and open competitive bidding process, and was therefore in violation of the Commission's requirements for the Telecom Program.⁴

Background

The Telecom Program provides eligible health care providers (HCPs) with universal service support for the difference between the urban and rural rates for eligible telecommunications services, subject to limitations set forth in the Commission's rules.⁵ FCC rules require HCPs to competitively bid the requested services and select the most cost-effective method of providing the requested service.⁶ Specifically, each HCP must make a bona fide request for eligible services by posting an FCC Form 465 to USAC's website for telecommunications carriers to review.⁷ The HCP must review all bids submitted in response to the FCC Form 465 and wait at least 28 days before entering into a service agreement with the selected service provider.⁸

The FCC further requires that the competitive bidding process be fair and open, and that the process not be compromised by improper conduct by the applicant, service provider, or both parties.⁹ Accordingly, a service provider participating in the competitive bidding process cannot be involved in the preparation of the HCP's FCC Form 465, request for proposal (RFP), or vendor selection process.¹⁰ Consultants or other parties working on behalf of the HCP who have an

⁴ See *Requests for Review of Decisions of the Universal Service Administrator by Hospital Networks Management, Inc. Manchaca, Texas*, WC Docket No. 02-60, Order, 31 FCC Rcd 5731, 5733, para. 4 (2016) (*Hospital Networks Management Order*) (citing *Federal-State Joint Board on Universal Services*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076, para. 480 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (requiring competitive bidding processes to be fair and open such that no bidders receive an unfair advantage); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, FCC 17-164 at 28, para. 100 (OHMSV Dec. 18, 2017) (*2017 NPRM and Order*) ("[A] process that is not 'fair and open' is inherently inconsistent with 'competitive bidding.'"). Cf. *Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45 *et al.*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (*Schools and Libraries Third Report and Order*) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources). See generally, 47 C.F.R. 54.603(a).

⁵ See 47 C.F.R. §§ 54.602(a), 54.604(b).

⁶ See 47 C.F.R. §§ 54.603(a), (b)(4), 54.615(a).

⁷ See 47 C.F.R. § 54.603; see also FCC Form 465 Health Care Providers Universal Service Description of Services Requested & Certification Form, OMB 3060-0804 (Nov. 2012) (*FCC Form 465*).

⁸ 47 C.F.R. § 54.603(b)(3).

⁹ *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4.

¹⁰ *Id.* (citing *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket No. 02-6, 25 FCC Rcd 18762, 18799-800, para. 86 (2010) (*Schools and*

ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider are also prohibited from performing any of those tasks on behalf of the HCP.¹¹ The FCC has further clarified that the individual listed as the contact person on the FCC Forms 465 may not be affiliated with a service provider that participates in the bidding process as a bidder.¹² As the FCC explained, the contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested, and a contact person that has a relationship with a prospective service provider may influence the competitive bidding process in two ways; either other prospective bidders may decide not to bid, or the contact person may not provide information to other bidders of the same type and quality that the contact person retains for its own use as a bidder.¹³ Further, the FCC has stated that any FCC Form 465 that lists as the contact person an employee or representative of a service provider that also participates in the bidding process as a bidder or is ultimately selected to provide the requested services is deemed defective and any funding requests arising from that form must be denied.¹⁴ To

Libraries Sixth Report and Order) (“an applicant violates the Commission’s competitive bidding rules if the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process”). See also *Request for Review by Mastermind Internet Services, Inc., et al.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028 (2000) (*Mastermind Order*) (finding that the FCC Form 470 contact person influences an applicant’s competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); *Request for Review by Dickenson County Public Schools et al.*, CC Docket No. 96-45, 17 FCC Rcd 15747, 15748, para. 3 (2002) (noting that an applicant impairs its ability to hold a fair and open competitive bidding process when the applicant’s FCC Form 470 contact person is also a service provider participating in the bidding process as a bidder); *Requests for Review of the Decision of the Universal Service Administrator by SEND Technologies, L.L.C.*, CC Docket No. 02-6, Order, 22 FCC Rcd 4950, 4951, para. 3 (Wireline Comp. Bur. 2007) (*SEND Order*) (citing *Mastermind Order*, 16 FCC Rcd at 4032-4033, paras 9-10).

¹¹ *Hospital Networks Management Order*, 31 FCC Rcd at 5733-34, para. 4 (citing *SEND Order*, 22 FCC Rcd 4950 (finding that where the applicant’s contact person is also a partial owner of the selected service provider, the relationship between the applicant and the service provider creates a conflict of interest and impedes fair and open competition)).

¹² *Id.* at 5742, para. 20 (citing *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18799-800, para. 86 (“an applicant violates the Commission’s competitive bidding rules if the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process”)).

¹³ See *SEND Order*, 22 FCC Rcd at 4952-53, para. 3 (citing *Mastermind Order*, 16 FCC Rcd at 4033, para. 11).

¹⁴ *Id.* (citing *Mastermind Order*, 16 FCC Rcd at 4032, para. 9). See also *Send Order*, 22 FCC Rcd at 4952-53, para. 3 (“[I]n the *Mastermind Order*, the Commission held that, where an FCC Form 470 lists a contact person who is an employee or representative of a service provider who participates in the competitive bidding process, the FCC Form 470 is defective.”). In *Hospital Networks Management Order*, the FCC observed that the mechanics of the bidding processes in the rural health care and E-rate programs are effectively the same and that, like the FCC Form 470 in the E-rate program (i.e., the FCC Form inviting service providers to submit bids in response to an applicant’s request for services), the rural health care program’s FCC Form 465 describes the applicant’s planned service requirements, as well as other information regarding the applicant and its competitive bidding process that may be relevant to the preparation of bids. See 31 FCC Rcd at 5741-42, para. 20.

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the extent support has been improperly committed and/or disbursed, USAC must recover such funds through its normal processes.¹⁵

Applicants' Funding Requests and Commitments

On March 8, 2012, August 29, 2013, and December 13, 2013, respectively, Trinity, Burke, and UTHSCT submitted FCC Forms 465 requesting eligible services, which resulted in the selection of Windstream to provide services for the FRNs listed in Appendix A.¹⁶ The contact person listed on each of the FCC Forms 465 was Gary Speck, an employee of ABS Telecom, LLC (ABS Telecom).¹⁷ Between March 12, 2013 and May 11, 2016, USAC issued funding commitment letters (FCLs) to the Applicants for these funding requests for FYs 2012 through 2015.¹⁸

Based on its subsequent review and investigation, USAC determined that the relationship between Windstream and Mr. Gary Speck, the party who filed the FCC Forms 465 on behalf of the Applicants and whose employer, ABS Telecom, LLC (ABS Telecom), was listed as a vendor on at least one of the Applicants' service agreements with Windstream, created a conflict of interest that impaired the Applicants' ability to hold a fair and open competitive bidding process for the FRNs listed in Appendix A.¹⁹ Therefore, on October 23, 2017, USAC issued COMADs to Windstream,

¹⁵ See *Comprehensive Review of the Universal Service Fund Management, Administration, & Oversight, Federal-State Joint Board on Universal Service Schools & Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline & Link-Up Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, and 03-109, CC Docket Nos. 96-45, 02-6, and 97-21, Report and Order, 22 FCC Rcd 16372, 16386, para. 30 (2007) (“[F]unds disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of a Commission rule that implements the statute or a substantive program goal should be recovered.”). *C.f.* *Changes to the Board of Directors of the National Exchange Carrier Association, Inc. Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd. 7197, 7200, para. 8 (1999) (*Commitment Adjustment Order*) (finding that Congress requires the Commission to recover monies erroneously disbursed under the E-rate program); *Changes to Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Order, 15 FCC Rcd. 22975, 22977, para. 3 (2000) (“As explained in the *Commitment Adjustment Order*, both the Debt Collection Improvement Act (DCIA) and the Commission's rules require collection of any disbursements it made in violation of the Act.”).

¹⁶ See FCC Form 465 No. 113152 for FY 2011 (Mar. 8, 2012); FCC Form 465 No. 43137856 for FY 2013 (Aug. 29, 2013); FCC Form 465 No. 43139560 for FY 2013 (Dec. 13, 2013).

¹⁷ See *id.*

¹⁸ See FCLs listed in Appendix A.

¹⁹ On December 23, 2016, USAC sent information requests to Windstream and the Applicants requesting clarification or additional information to address certain issues or deficiencies USAC identified in certain funding requests submitted by Applicants for FY 2015. See Email from Jeremy Matkovich, Program Analyst, USAC, to Darlene Flournoy, ETIHN Coordinator, Burke Center, Trinity, UTHSCT (Dec. 23, 2016); Email from Jeremy Matkovich, Program Analyst, USAC, to Tim Loken, Director Regulatory Reporting, Windstream (Dec. 23, 2016). In its response to USAC's December 23, 2016 information request, Windstream indicated that its monthly recurring charges for each these FY 2015 funding requests included commissions paid to “Channel Partners” as compensation for identifying and bringing a customer to Windstream. See Letter from Tim Loken, Director Regulatory Reporting, Windstream, to USAC at 1 (Jan. 6, 2017). According to Windstream's website, ABS Telecom, LLC was named one of Windstream's “Elite Channel Partners” in 2014. See Windstream Website, Windstream Names 2014 Elite Channel Partners, available at <http://news.windstream.com/news-releases/news-release-details/windstream-announces-2014-elite-channel-partners> (last visited May 17, 2018). Based this information, USAC found that Mr.

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seeking adjustment of funding committed for the FRNs listed in Appendix A because the Applicants' selection of Windstream as the service provider for these funding requests was not the result of a fair and open competitive bidding process, in violation of the FCC's requirements.²⁰

Windstream's Appeal

On December 19, 2017, Windstream appealed USAC's adjustment of funding for the FRNs listed in Appendix A.²¹ In the Appeal, Windstream acknowledges that it had a business relationship with Mr. Speck, owner and manager of ABS Telecom, arising from a channel partner agreement executed on March 15, 2011, under which ABS Telecom served as its sales agent by identifying business opportunities for Windstream.²² However, Windstream argues that (1) the current rules applicable to the Telecom Program do not contain the "fair and open" competitive bidding rules USAC contends were violated;²³ (2) USAC should reverse its decision to deny funding to Windstream because Windstream did not violate any "fair and open" competitive bidding requirements;²⁴ (3) if USAC finds that competitive bidding rules were violated, notwithstanding that the FCC only now is proposing to adopt such requirements, USAC should direct any recovery action towards ABS;²⁵ and (4) constitutional and equitable considerations militate against depriving Windstream of funding.²⁶ We address each of these arguments below.

ARGUMENT 1 - The current rules applicable to the Telecom Program do not contain the "fair and open" competitive bidding rules USAC contends were violated.

First, Windstream argues that Telecom Program rules do not require the HCP's selection of a service provider to be the result of a competitive bidding process that is fair and open.²⁷ To support its claim that this standard is inapplicable to the Applicants' competitive bidding processes, Windstream cites the *2017 NPRM and Order*, in which the FCC proposed the adoption of new rules codifying the fair and open competitive bidding requirement in the Telecom Program.²⁸

Speck's role as the contact person listed on the Applicants' FCC Forms 465 and affiliation with Windstream created a conflict of interest that tainted the competitive bidding process for all funding requests associated with these forms, including the FRNs listed in Appendix A. See Email from Rural Health Care Division, USAC to Windstream et al. (Mar. 13, 2017) (Administrator's Denials); Letter from Craig Davis, USAC to Darlene Flournoy, The Burke Center – West Austin Street et al. (Mar., 13, 2017) (Further Explanation of Decision); Administrator's COMADs at 4.

²⁰ See Administrator's COMADs at 4.

²¹ See Appeal.

²² See *id.* at 3-4.

²³ *Id.* at 7.

²⁴ *Id.* at 8.

²⁵ *Id.* at 13.

²⁶ *Id.* at 15.

²⁷ See *id.* at 7.

²⁸ See Appeal at 7-8; *2017 NPRM and Order* at 28, para. 100.

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Specifically, Windstream argues that this proposal constitutes an acknowledgment by the FCC that this requirement does not currently apply to competitive bidding in the Telecom Program.²⁹

We reject Windstream's arguments. Although Windstream is correct that the requirement has not been codified in existing Telecom Program rules, the FCC has consistently held that the competitive bidding process that results in the selection of a service provider in the Telecom Program must be fair and open.³⁰ The FCC also explicitly acknowledged in the *2017 NPRM and Order* that the formal adoption of rules codifying the fair and open standard in the Telecom Program would merely codify its existing competitive bidding requirements,³¹ and noted that a process that is not "fair and open" is inherently inconsistent with "competitive bidding."³² Further, the Commission has applied the fair and open competitive bidding requirement in its decisions to determine whether HCPs' selection of a service provider in individual cases complied with Telecom Program requirements, despite the lack of a formal rule codifying this requirement.³³ Therefore, USAC rejects this argument.

ARGUMENT 2 -USAC should reverse its decision to deny funding to Windstream because Windstream did not violate any "fair and open" competitive bidding requirements.

Second, Windstream argues that USAC should not adjust the funding for the FRNs listed in Appendix A because Windstream did not violate the FCC's competitive bidding requirements.³⁴ However, this claim is incorrect. USAC was required to adjust the Applicants' funding commitments because the support was for services procured through a competitive bidding process that was not "fair and open," in violation of the FCC's competitive bidding requirements.³⁵ Specifically, the relationship between Windstream and Mr. Speck, who filed the FCC Forms 465 on behalf of the Applicants and whose employer, ABS Telecom, was contracted by Windstream to serve as its sales agent by identifying business opportunities, created a conflict of interest that undermined the competitive bidding process for the FRNs listed in the Appendices.³⁶ As previously stated, consultants who have a financial stake with respect to a bidding service provider

²⁹ See Appeal at 7.

³⁰ *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4 (citing *Mastermind Order*, 16 FCC Rcd at 4033, para. 10). See *id.* at 5731 ("The principles underlying the *Mastermind Order* and other orders addressing fair and open competitive bidding not only apply to the E-rate program (more formally known as the schools and libraries universal service program), but also to participants in the rural health care program.").

³¹ See *2017 NPRM and Order* at 28, para. 100 ("Because we are merely proposing to codify an existing requirement, RHC Program participants that are already complying with our competitive bidding rules should not be impacted.").

³² *Id.* (citing *Universal Service First Report and Order*, 12 FCC Rcd 8776).

³³ See, e.g. *Hospital Networks Management Order*, 31 FCC Rcd 5731 (finding a violation of the Commission's competitive bidding requirements where the Telecom Program applicant's competitive bidding process was not "fair and open"). See also *id.* at 5741, para. 18 n.84 (citing *Mastermind Order*, 16 FCC Rcd at 4032-33, para. 10 (concluding that a competitive bidding violation occurred despite the lack of a specific rule addressing the facts at issue)).

³⁴ See Appeal at 8.

³⁵ See *supra* note 4.

³⁶ See Further Explanation of Decision at 6.

may not be involved in the preparation of the FCC Forms 465 for the HCPs competitively bidding requested services under the Telecom Program because involvement impairs the HCPs' ability to hold a fair and open competitive bidding process.³⁷ Therefore, Mr. Speck's dual role as the HCPs' consultant and Windstream's sales agent created a conflict of interest that impeded fair and open competition, in violation of the FCC's competitive bidding requirements.

USAC also finds that Windstream was responsible for the competitive bidding violation because it was aware of its business relationship with Mr. Speck through its channel partner agreement with ABS Telecom, and nevertheless submitted bids in response to FCC Forms 465 that listed Mr. Speck as the contact person for the Applicants. As Windstream acknowledges in the Appeal, "recovery actions should be directed to the party or parties that committed the rule or statutory violation in question."³⁸ In this case, Windstream was aware of the facts surrounding the conflict of interest at issue, but nevertheless submitted a bid in response to the Applicants' FCC Forms 465. When there is evidence of a conflict of interest under these circumstances, FCC precedent requires USAC to seek recovery from the service provider.³⁹ Therefore, it was appropriate for USAC to seek recovery of any improperly disbursed funding from Windstream.

ARGUMENT 3 - If USAC finds that competitive bidding rules were violated, notwithstanding that the FCC only now is proposing to adopt such requirements, USAC should direct any recovery action towards ABS.

Next, Windstream argues that, to the extent there was a violation of the FCC's competitive bidding rules and requirements governing the Telecom Program, USAC should seek recovery of improperly disbursed funding from ABS Telecom.⁴⁰ However, this claim is incorrect because the FCC requires USAC to seek recovery from the applicant, the service provider, or both, depending on the facts of the case, and USAC is not authorized to recover support from third parties like ABS Telecom.⁴¹ In this case, as previously stated, Windstream was aware of the facts surrounding the

³⁷ See *supra* note 11.

³⁸ *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, and 02-60, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, para. 15 (2004) (*Schools and Libraries Fourth Report and Order*). See Appeal at 10.

³⁹ See, e.g., *SEND Order*, 22 FCC Rcd 4950 (directing USAC to recover from the service provider because the relationship between the applicant's contact person and the service provider involved a conflict of interest that impeded fair and open competition); *Requests for Review of Decisions of the Universal Service Administrator by Achieve Telecom Network of Ma Canton, Ma*, CC Docket No. 02-6, Order, 30 FCC Rcd. 3653, 3654, para. 3 n.7. (2015) (directing USAC to discontinue its recovery actions against the applicants, and seek recovery only from the service provider because it was in a better position to prevent the competitive bidding violation and there was no evidence that the applicants knew of, or could have discovered, the scheme that resulted in the service provider receiving an unfair advantage in the competitive bidding process).

⁴⁰ See Appeal at 13.

⁴¹ See *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd at 15257, para. 15 (directing USAC to determine whether recovery should be directed to the beneficiary, the service provider, or both); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16814, para. 339 (2012)

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conflict of interest at issue, but nevertheless submitted a bid in response to the Applicants' FCC Forms 465. Therefore, FCC precedent requires USAC to seek recovery of any improperly disbursed funding from Windstream.⁴²

ARGUMENT 4 - Constitutional and equitable considerations militate against depriving Windstream of funding.

Finally, Windstream argues that USAC's recovery of funding for the FRNs listed in Appendix A raises constitutional and equitable concerns.⁴³ Because these issues are questions of policy, and USAC is not authorized to make policy, we do not address these claims.⁴⁴

Administrator's Decision on Appeal

USAC is unable to grant the Appeal because Mr. Speck's dual role as a consultant for the Applicants and channel partner for Windstream created a conflict of interest that tainted the competitive bidding process for the FRNs listed in Appendix A. Therefore, because the competitive bidding process that resulted in the Applicants' selection of Windstream as the service provider for these funding requests was not fair and open, in violation of the FCC's rules,⁴⁵ USAC denies the Appeal.

If you wish to appeal this decision or request a waiver, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Further instructions for filing appeals or requesting waivers are also available at: <http://www.usac.org/about/about/program-integrity/appeals.aspx>.

Sincerely,

/s/ Universal Service Administrative Company

cc: William L. Elliott, Windstream Communications, LLC

("Recovery of funds will be directed at the party or parties (including both *beneficiaries and vendors*) who have committed the statutory or rule violation.") (emphasis added).

⁴² See *supra* note 39.

⁴³ See Appeal at 15.

⁴⁴ See generally, 47 C.F.R. § 54.702(c) ("[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."); 47 C.F.R. § 1.3 ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedures Act and the provisions of this chapter.").

⁴⁵ See *supra* note 4.

Appendix A
Appealed FRNs

FY	HCP NO.	HCP NAME	FORM 465	FRN	SP NAME	FCL
2012	26649	Trinity Valley Community College	113152	12100281	Windstream Communications, LLC	FCL for FRN 1210028 (Mar. 12, 2013)
2012	26649	Trinity Valley Community College	113152	12100321	Windstream Communications, LLC	FCL for FRN 1210032 (Jun. 5, 2013)
2012	26649	Trinity Valley Community College	113152	12100381	Windstream Communications, LLC	FCL for FRN 1210038 (Jun. 5, 2013)
2013	26649	Trinity Valley Community College	113152	13320191	Windstream Communications, LLC	FCL for FRN 1332019 (Apr. 8, 2014)
2014	26649	Trinity Valley Community College	113152	14557881	Windstream Communications, LLC	FCL for FRN 1455788 (Mar. 11, 2015)
2014	26649	Trinity Valley Community College	113152	14557931	Windstream Communications, LLC	FCL for FRN 1455793 (Mar. 11, 2015)
2014	26649	Trinity Valley Community College	113152	14557961	Windstream Communications, LLC	FCL for FRN 1455796 (Mar. 11, 2015)
2014	26649	Trinity Valley Community College	113152	14557971	Windstream Communications, LLC	FCL for FRN 1455797 (Mar. 11, 2015)
2014	26649	Trinity Valley Community College	113152	14557981	Windstream Communications, LLC	FCL for FRN 1455798 (Mar. 11, 2015)

Appendix A
Appealed FRNs

FY	HCP NO.	HCP NAME	FORM 465	FRN	SP NAME	FCL
2014	26649	Trinity Valley Community College	113152	14561241	Windstream Communications, LLC	FCL for FRN 1456124 (Mar. 11, 2015)
2014	26649	Trinity Valley Community College	113152	14561251	Windstream Communications, LLC	FCL for FRN 1456125 (Mar. 11, 2015)
2014	26649	Trinity Valley Community College	113152	14561261	Windstream Communications, LLC	FCL for FRN 1456126 (Mar. 11, 2015)
2014	26649	Trinity Valley Community College	113152	14569971	Windstream Communications, LLC	FCL for FRN 1456997 (Mar. 18, 2015)
2014	26649	Trinity Valley Community College	113152	14569981	Windstream Communications, LLC	FCL for FRN 1456998 (Mar. 18, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14569991	Windstream Communications, LLC	FCL for FRN 1456999 (Mar. 11, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570001	Windstream Communications, LLC	FCL for FRN 1457000 (Mar. 18, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570011	Windstream Communications, LLC	FCL for FRN 1457001 (Mar. 11, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570021	Windstream Communications, LLC	FCL for FRN 1457002 (Mar. 18, 2015)

Appendix A
Appealed FRNs

FY	HCP NO.	HCP NAME	FORM 465	FRN	SP NAME	FCL
2014	33149	The Burke Center - West Austin Street	43137856	14570031	Windstream Communications, LLC	FCL for FRN 1457003 (Mar. 18, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570041	Windstream Communications, LLC	FCL for FRN 1457004 (Mar. 18, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570051	Windstream Communications, LLC	FCL for FRN 1457005 (Mar. 11, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570061	Windstream Communications, LLC	FCL for FRN 1457006 (Mar. 11, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570071	Windstream Communications, LLC	FCL for FRN 1457007 (Mar. 11, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570081	Windstream Communications, LLC	FCL for FRN 1457008 (Mar. 11, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570101	Windstream Communications, LLC	FCL for FRN 1457010 (Mar. 11, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14570111	Windstream Communications, LLC	FCL for FRN 1457011 (Mar. 11, 2015)
2014	26649	Trinity Valley Community College	113152	14626371	Windstream Communications, LLC	FCL for FRN 1462637 (Jun. 10, 2015)

Appendix A
Appealed FRNs

FY	HCP NO.	HCP NAME	FORM 465	FRN	SP NAME	FCL
	26649	Trinity Valley Community College	113152	14626401	Windstream Communications, LLC	FCL for FRN 1462640 (Jun. 10, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14626441	Windstream Communications, LLC	FCL for FRN 1462644 (Jun. 10, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14626461	Windstream Communications, LLC	FCL for FRN 1462646 (Jun. 10, 2015)
2014	33149	The Burke Center - West Austin Street	43137856	14656871	Windstream Communications, LLC	FCL for FRN 1465687 (Aug. 19, 2015)
2015	34447	UTHSCT on behalf of ETIHN - Andrews Center	43139560	15752031	Windstream Communications, LLC	FCL for FRN 1575203 (May 11, 2016)
2015	34447	UTHSCT on behalf of ETIHN - Andrews Center	43139560	15784081	Windstream Communications, LLC	FCL for FRN 1578408 (May 11, 2016)
2015	34447	UTHSCT on behalf of ETIHN - Andrews Center	43139560	15784091	Windstream Communications, LLC	FCL for FRN 1578409 (May 11, 2016)
2015	34447	UTHSCT on behalf of ETIHN - Andrews Center	43139560	15784101	Windstream Communications, LLC	FCL for FRN 1578410 (May 11, 2016)

Appendix A
Appealed FRNs

FY	HCP NO.	HCP NAME	FORM 465	FRN	SP NAME	FCL
2015	26649	Trinity Valley Community College	113152	15784111	Windstream Communications, LLC	FCL for FRN 1578411 (Apr. 27, 2016)
2015	26649	Trinity Valley Community College	113152	15784131	Windstream Communications, LLC	FCL for FRN 1578413 (May 11, 2016)
2015	26649	Trinity Valley Community College	113152	15784141	Windstream Communications, LLC	FCL for FRN 1578414 (Apr. 27, 2016)
2015	26649	Trinity Valley Community College	113152	15784151	Windstream Communications, LLC	FCL for FRN 1578415 (Apr. 27, 2016)
2015	26649	Trinity Valley Community College	113152	15784161	Windstream Communications, LLC	FCL for FRN 1578416 (May 11, 2016)
2015	26649	Trinity Valley Community College	113152	15784171	Windstream Communications, LLC	FCL for FRN 1578417 (May 11, 2016)
2015	26649	Trinity Valley Community College	113152	15784181	Windstream Communications, LLC	FCL for FRN 1578418 (May 11, 2016)
2015	26649	Trinity Valley Community College	113152	15784191	Windstream Communications, LLC	FCL for FRN 1578419 (May 11, 2016)
2015	26649	Trinity Valley Community College	113152	15784201	Windstream Communications, LLC	FCL for FRN 1578420 (May 11, 2016)

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Appendix A

Appealed FRNs

FY	HCP NO.	HCP NAME	FORM 465	FRN	SP NAME	FCL
2015	26649	Trinity Valley Community College	113152	15784211	Windstream Communications, LLC	FCL for FRN 1578421 (Apr. 27, 2016)

EXHIBIT C to
Windstream Request for
Review (Aug. 23, 2018)

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic and Certified Mail

June 29, 2018

Mr. Matthew A. Brill
Ms. Elizabeth R. Park
Latham & Watkins LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004

Cc: Ms. Amy Barnes
Windstream Communications, LLC
4001 Rodney Parham Rd, B1F01
Little Rock, AR 72212

Re: Windstream Communications - Appeal of USAC's
Decision for Funding Request Numbers Listed in Appendix A

Dear Mr. Brill:

The Universal Service Administrative Company (USAC) has completed its evaluation of the May 11, 2017 letter of appeal (Appeal) submitted on behalf of Windstream Communications, LLC (Windstream).¹ The funding request numbers (FRNs) that are the subject of the Appeal are listed in Appendices A and B, and relate to funding under the federal Universal Service Rural Health Care Telecommunications Program (Telecom Program).

On March 13, 2017, USAC denied requests for Telecom Program support submitted by The Burke Center – West Austin Street (Burke), Trinity Valley Community College (Trinity), and UTHSCT on behalf of ETIHN – Andrews Center (UTHSCT) (collectively, the Applicants) for funding years (FYs) 2012 through 2016.² The Appeal requests that USAC reverse its denials of the funding requests listed in the Appendices.³

USAC has reviewed the Appeal and the facts related to this matter and has determined that Federal Communications Commission (FCC or Commission) rules and requirements support the

¹ See Letter from Matthew A. Brill and Elizabeth R. Park, Latham & Watkins LLP on behalf of Windstream Communications, LLC to Rural Health Care Division, USAC (May 11, 2017) (Appeal).

² See Emails from Rural Health Care Division, USAC to Darlene Flournoy, The Burke Center – West Austin Street et al. (Mar. 13, 2017) (Administrator's Denials); Letter from Rural Health Care Division, USAC to Darlene Flournoy, The Burke Center – West Austin Street et al. (Mar. 13, 2017) (Further Explanation of Decision).

³ See Appeal at 2.

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denials of the FRNs listed in the Appendices because the Applicants' selection of Windstream as the service provider for these funding requests was not the result of a fair and open competitive bidding process, and was therefore in violation of the Commission's requirements for the Telecom Program.⁴

Background

The Telecom Program provides eligible health care providers (HCPs) with universal service support for the difference between the urban and rural rates for eligible telecommunications services, subject to limitations set forth in the Commission's rules.⁵ FCC rules require HCPs to competitively bid the requested services and select the most cost-effective method of providing the requested service.⁶ Specifically, each HCP must make a bona fide request for eligible services by posting an FCC Form 465 to USAC's website for telecommunications carriers to review.⁷ The HCP must review all bids submitted in response to the FCC Form 465 and wait at least 28 days before entering into a service agreement with the selected service provider.⁸

The FCC further requires that the competitive bidding process be fair and open, and that the process not be compromised by improper conduct by the applicant, service provider, or both parties.⁹ Accordingly, a service provider participating in the competitive bidding process cannot be involved in the preparation of the HCP's FCC Form 465, request for proposal (RFP), or vendor selection process.¹⁰ Consultants or other parties working on behalf of the HCP who have an

⁴ See *Requests for Review of Decisions of the Universal Service Administrator by Hospital Networks Management, Inc. Manchaca, Texas*, WC Docket No. 02-60, Order, 31 FCC Rcd 5731, 5733, para. 4 (2016) (*Hospital Networks Management Order*) (citing *Federal-State Joint Board on Universal Services*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076, para. 480 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (requiring competitive bidding processes to be fair and open such that no bidders receive an unfair advantage); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, FCC 17-164 at 28, para. 100 (OHMSV Dec. 18, 2017) (*2017 NPRM and Order*) ("[A] process that is not 'fair and open' is inherently inconsistent with 'competitive bidding.'"). Cf. *Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45 *et al.*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (*Schools and Libraries Third Report and Order*) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources). See generally, 47 C.F.R. 54.603(a).

⁵ See 47 C.F.R. §§ 54.602(a), 54.604(b).

⁶ See 47 C.F.R. §§ 54.603(a), (b)(4), 54.615(a).

⁷ See 47 C.F.R. § 54.603; see also FCC Form 465 Health Care Providers Universal Service Description of Services Requested & Certification Form, OMB 3060-0804 (Nov. 2012) (*FCC Form 465*).

⁸ 47 C.F.R. § 54.603(b)(3).

⁹ *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4.

¹⁰ *Id.* (citing *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket No. 02-6, 25 FCC Rcd 18762, 18799-800, para. 86 (2010) (*Schools and Libraries Sixth Report and Order*) ("an applicant violates the Commission's competitive bidding rules if the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process")). See also *Request for Review by Mastermind Internet Services, Inc., et al.*, CC Docket No. 96-45, Order,

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ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider are also prohibited from performing any of those tasks on behalf of the HCP.¹¹ The FCC has further clarified that the individual listed as the contact person on the FCC Forms 465 may not be affiliated with a service provider that participates in the bidding process as a bidder.¹² As the FCC explained, the contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested, and a contact person that has a relationship with a prospective service provider may influence the competitive bidding process in two ways; either other prospective bidders may decide not to bid, or the contact person may not provide information to other bidders of the same type and quality that the contact person retains for its own use as a bidder.¹³ Further, the FCC has stated that any FCC Form 465 that lists as the contact person an employee or representative of a service provider that also participates in the bidding process as a bidder or is ultimately selected to provide the requested services is deemed defective and any funding requests arising from that form must be denied.¹⁴

Applicants' Funding Requests

Between April 20, 2012 and June 2, 2015, the Applicants submitted FCC Forms 465 requesting eligible services, which resulted in the selection of Windstream to provide services for the FRNs

16 FCC Rcd 4028 (2000) (*Mastermind Order*) (finding that the FCC Form 470 contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); *Request for Review by Dickenson County Public Schools et al.*, CC Docket No. 96-45, 17 FCC Rcd 15747, 15748, para. 3 (2002) (noting that an applicant impairs its ability to hold a fair and open competitive bidding process when the applicant's FCC Form 470 contact person is also a service provider participating in the bidding process as a bidder); *Requests for Review of the Decision of the Universal Service Administrator by SEND Technologies, L.L.C.*, CC Docket No. 02-6, Order, 22 FCC Rcd 4950, 4951, para. 3 (Wireline Comp. Bur. 2007) (*SEND Order*) (citing *Mastermind Order*, 16 FCC Rcd at 4032-4033, paras 9-10).

¹¹ *Hospital Networks Management Order*, 31 FCC Rcd at 5733-34, para. 4 (citing *SEND Order*, 22 FCC Rcd 4950 (finding that where the applicant's contact person is also a partial owner of the selected service provider, the relationship between the applicant and the service provider creates a conflict of interest and impedes fair and open competition)).

¹² *Id.* at 5742, para. 20 (citing *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18799-800, para. 86 ("an applicant violates the Commission's competitive bidding rules if the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process"))).

¹³ See *SEND Order*, 22 FCC Rcd at 4952-53, para. 3 (citing *Mastermind Order*, 16 FCC Rcd at 4033, para. 11).

¹⁴ *Id.* (citing *Mastermind Order*, 16 FCC Rcd at 4032, para. 9). See also *Send Order*, 22 FCC Rcd at 4952-53, para. 3 ("[I]n the *Mastermind Order*, the Commission held that, where an FCC Form 470 lists a contact person who is an employee or representative of a service provider who participates in the competitive bidding process, the FCC Form 470 is defective."). In *Hospital Networks Management Order*, the FCC observed that the mechanics of the bidding processes in the rural health care and E-rate programs are effectively the same and that, like the FCC Form 470 in the E-rate program (i.e., the FCC Form inviting service providers to submit bids in response to an applicant's request for services), the rural health care program's FCC Form 465 describes the applicant's planned service requirements, as well as other information regarding the applicant and its competitive bidding process that may be relevant to the preparation of bids. See 31 FCC Rcd at 5741-42, para. 20.

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listed in the Appendices.¹⁵ The contact person listed on each of the FCC Forms 465 was Gary Speck, an employee of ABS Telecom, LLC (ABS Telecom).¹⁶

Based on its review and investigation, USAC determined that the relationship between Windstream and Mr. Gary Speck, the party who filed the FCC Forms 465 on behalf of the Applicants and whose employer, ABS Telecom, was listed as a vendor on at least one of the Applicants' service agreements with Windstream, created a conflict of interest that impaired the Applicants' ability to hold a fair and open competitive bidding process for the FRNs listed in the Appendices.¹⁷ Therefore, on March 13, 2017, USAC denied the funding requests because the Applicants' selection of Windstream as the service provider for these funding requests was not the result of a fair and open competitive bidding process, in violation of the FCC's requirements.¹⁸

Windstream's Appeal

On May 11, 2017, Windstream appealed USAC's denials of the FRNs listed in the Appendices.¹⁹ In the Appeal, Windstream acknowledges that it had a business relationship with Mr. Speck, owner and manager of ABS Telecom, arising from a channel partner agreement executed on March 15, 2011, under which ABS Telecom served as its sales agent by identifying business opportunities for Windstream.²⁰ However, Windstream argues that (1) USAC should reverse its decision to deny

¹⁵ See FCC Form 465 No. 43123237 for FY 2012 (Apr. 20, 2012); FCC Form 465 No. 43123240 for FY 2012 (Apr. 20, 2012); FCC Form 465 No. 43133868 for FY 2013 (May 16, 2013); FCC Form 465 No. 43144511 for FY 2014 (May 29, 2014); FCC Form 465 No. 43155659 for FY 2015 (Jun. 1, 2015); FCC Form 465 No. 43155674 for FY 2015 (Jun. 1, 2015); FCC Form 465 No. 43155889 for FY 2015 (Jun. 2, 2015).

¹⁶ See *id.*

¹⁷ On December 23, 2016, USAC sent information requests to Windstream and the Applicants requesting clarification or additional information to address certain issues or deficiencies USAC identified in the funding requests listed in Appendix A. See Email from Jeremy Matkovich, Program Analyst, USAC, to Darlene Flournoy, ETIHN Coordinator, Burke Center, Trinity, UTHSCT (Dec. 23, 2016); Email from Jeremy Matkovich, Program Analyst, USAC, to Tim Loken, Director Regulatory Reporting, Windstream (Dec. 23, 2016). In its response to USAC's December 23, 2016 information request, Windstream indicated that its monthly recurring charges for each of these funding requests included commissions paid to "Channel Partners" as compensation for identifying and bringing a customer to Windstream. See Letter from Tim Loken, Director Regulatory Reporting, Windstream, to USAC at 1 (Jan. 6, 2017). According to Windstream's website, ABS Telecom, LLC was named one of Windstream's "Elite Channel Partners" in 2014. See Windstream Website, Windstream Names 2014 Elite Channel Partners, available at <http://news.windstream.com/news-releases/news-release-details/windstream-announces-2014-elite-channel-partners> (last visited May 17, 2018). Based on this information, USAC found that Mr. Speck's role as the contact person listed on the Applicants' FCC Forms 465 and affiliation with Windstream created a conflict of interest that tainted the competitive bidding process for each of the funding requests in the Appendices. See Administrator's Denials; Further Explanation of Decision.

¹⁸ See Administrator's Denials; Further Explanation of Decision. To the extent USAC provided funding for the FRNs listed in the Appendices, it sought recovery of those funds in a separate letter. See Emails from Rural Health Care Division, USAC to Maribeth Everley, Windstream Communications, LLC (Oct. 23, 2017); Further Explanation of Decision at 2, nn. 2-3.

¹⁹ See Appeal.

²⁰ See *id.* at 3.

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funding to Windstream because Windstream was not responsible for any conflict of interest;²¹ (2) USAC should direct any recovery action towards ABS;²² and (3) constitutional and equitable considerations militate against depriving Windstream of funding.²³ We address each of these arguments below.

ARGUMENT 1 - USAC should reverse its decision to deny funding to Windstream because Windstream was not responsible for any conflict of interest.

First, Windstream argues that USAC should not have denied funding for the FRNs listed in the Appendices because Windstream was not responsible for the conflict of interest that violated the FCC's competitive bidding requirements.²⁴ However, this claim is incorrect. USAC was required to deny the Applicants' funding requests because the support requested was for services procured through a competitive bidding process that was not "fair and open," in violation of the FCC's competitive bidding requirements.²⁵ Specifically, the relationship between Windstream and Mr. Speck, who filed the FCC Forms 465 on behalf of the Applicants and whose employer, ABS Telecom, was contracted by Windstream to serve as its sales agent by identifying business opportunities, created a conflict of interest that undermined the competitive bidding process for the FRNs listed in the Appendices.²⁶ As previously stated, consultants who have a financial stake with respect to a bidding service provider may not be involved in the preparation of the FCC Forms 465 for the HCPs competitively bidding requested services under the Telecom Program because such involvement constitutes a conflict of interest that impairs the HCPs' ability to hold a fair and open competitive bidding process.²⁷ Mr. Speck's dual role as the HCPs' consultant and Windstream's sales agent created a conflict of interest that impeded fair and open competition, in violation of the FCC's competitive bidding requirements. Even if, as Windstream claims, it was not responsible for the conflict of interest in this case, FCC precedent requires USAC to deny funding requests where there is improper involvement of a bidding service provider's employee or representative in the preparation of the underlying FCC Forms 465.²⁸ Therefore, it was appropriate for USAC to deny the funding requests listed in the Appendices.

²¹ *Id.* at 6.

²² *Id.* at 11.

²³ *Id.* at 12.

²⁴ *See* Appeal at 6.

²⁵ *See supra* note 4.

²⁶ *See* Further Explanation of Decision at 6.

²⁷ *See supra* note 11.

²⁸ *See supra* note 14. Because the question of whether Windstream was responsible for the conflict of interest is relevant only to USAC's recovery of Telecom Program support committed to the Applicants, and not to its denial of their funding requests, which was required by FCC precedent regardless of which party caused the competitive bidding violation, USAC will address this question in its response to Windstream's appeal of USAC's adjustment of the Applicants' funding commitments, and not in the instant decision. *See id.*; Letter from Matthew A. Brill and Elizabeth R. Park, Latham & Watkins LLP on behalf of Windstream Communications, LLC to Rural Health Care Division, USAC (Dec. 19, 2017) (Windstream COMAD Appeal).

ARGUMENT 2 - USAC should direct any recovery action toward ABS.

Next, Windstream argues that, to the extent there was a violation of the FCC's competitive bidding rules and requirements governing the Telecom Program, USAC should seek recovery of improperly disbursed funding from ABS Telecom.²⁹ However, this claim is not relevant to USAC's denial of the FRNs listed in the Appendices, which was required by FCC precedent irrespective of any separate action by USAC to recover previously committed funds.³⁰ Therefore, we do not address this argument in the instant decision.

ARGUMENT 3 - Constitutional and equitable considerations militate against depriving Windstream of funding.

Finally, Windstream argues that USAC's denial of funding for the FRNs listed in the Appendices raises constitutional and equitable concerns.³¹ Because these issues are questions of policy, and USAC is not authorized to make policy, we do not address these claims.³²

Administrator's Decision on Appeal

USAC is unable to grant the Appeal because Mr. Speck's dual role as a consultant for the Applicants and channel partner for Windstream created a conflict of interest that tainted the competitive bidding process for the FRNs listed in the Appendices. Therefore, because the competitive bidding process that resulted in the Applicants' selection of Windstream as the service provider for these funding requests was not fair and open, in violation of the FCC's rules,³³ USAC denies the Appeal.

If you wish to appeal this decision or request a waiver, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Further instructions for filing appeals or requesting waivers are available at: <http://www.usac.org/about/about/program-integrity/appeals.aspx>.

²⁹ See Appeal at 11.

³⁰ See *supra* note 14. USAC will address the question of whether it should seek recovery of previously committed funds from ABS Telecom in its response to Windstream's appeal of USAC's adjustment of the Applicants' funding commitments. See Windstream COMAD Appeal.

³¹ See Appeal at 12.

³² See generally, 47 C.F.R. § 54.702(c) ("[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."); 47 C.F.R. § 1.3 ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedures Act and the provisions of this chapter.").

³³ See *supra* note 4.

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Sincerely,

/s/ Universal Service Administrative Company

cc: William L. Elliott, Windstream Communications, LLC

Appendix A

Appealed FY 2015 FRNs Included in USAC's Information Request³⁴

HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Rural Rate	Urban Rate
33149	The Burke Center - West Austin Street	43144429	1580117	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580118	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580121	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580122	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580123	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580124	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580125	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580126	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580127	Windstream Communications, LLC	\$21,700.00	\$665.00

³⁴ See Email from Jeremy Matkovich, Program Analyst, USAC, to Darlene Flournoy, ETIHN Coordinator, Burke Center, Trinity, UTHSCT (Dec. 23, 2016); Email from Jeremy Matkovich, Program Analyst, USAC, to Tim Loken, Director Regulatory Reporting, Windstream (Dec. 23, 2016).

Appendix A

Appealed FY 2015 FRNs Included in USAC's Information Request³⁴

HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Rural Rate	Urban Rate
33149	The Burke Center - West Austin Street	43144429	1580128	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580129	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580130	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580131	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580132	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43155674	1584689	Windstream Communications, LLC	\$22,870.00	\$665.00
26649	Trinity Valley Community College	43133868	1578411	Windstream Communications, LLC	\$20,000.00	\$665.00
26649	Trinity Valley Community College	43133868	1578412	Windstream Communications, LLC	\$47,963.97	\$665.00
26649	Trinity Valley Community College	43133868	1578413	Windstream Communications, LLC	\$33,350.34	\$665.00
26649	Trinity Valley Community College	43133868	1578414	Windstream Communications, LLC	\$3,526.50	\$665.00

Appendix A

Appealed FY 2015 FRNs Included in USAC's Information Request³⁴

HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Rural Rate	Urban Rate
26649	Trinity Valley Community College	43133868	1578415	Windstream Communications, LLC	\$3,526.50	\$665.00
26649	Trinity Valley Community College	43144511	1578416	Windstream Communications, LLC	\$3,526.50	\$665.00
26649	Trinity Valley Community College	43144511	1578417	Windstream Communications, LLC	\$33,350.34	\$665.00
26649	Trinity Valley Community College	43144511	1578418	Windstream Communications, LLC	\$3,526.50	\$665.00
26649	Trinity Valley Community College	43123237	1578419	Windstream Communications, LLC	\$3,526.50	\$665.00
26649	Trinity Valley Community College	43123240	1578420	Windstream Communications, LLC	\$3,985.50	\$665.00
26649	Trinity Valley Community College	43155659	1578421	Windstream Communications, LLC	\$24,150.00	\$665.00
26649	Trinity Valley Community College	43155659	1580115	Windstream Communications, LLC	\$45,554.59	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1575203	Windstream Communications, LLC	\$51,000.00	\$665.00

Appendix A

Appealed FY 2015 FRNs Included in USAC's Information Request³⁴

HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Rural Rate	Urban Rate
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1578408	Windstream Communications, LLC	\$51,000.00	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1578409	Windstream Communications, LLC	\$51,000.00	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1578410	Windstream Communications, LLC	\$51,000.00	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1584974	Windstream Communications, LLC	\$50,473.50	\$665.00

Appendix B

Appealed FY 2012 – 2016 FRNs

FY	HCP No.	HCP Name	FCC Form 465	FRN	SP Name	Estimated or Commitment Amount
2012	26649	Trinity Valley Community College	43123237	1210028	Windstream Communications, LLC	\$28,615.00
2012	26649	Trinity Valley Community College	43123237	1210032	Windstream Communications, LLC	\$28,615.00
2012	26649	Trinity Valley Community College	43123240	1210038	Windstream Communications, LLC	\$33,205.00
2013	26649	Trinity Valley Community College	43123237	1332019	Windstream Communications, LLC	\$34,338.00
2014	33149	The Burke Center - West Austin Street	43144429	1456999	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457000	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457001	Windstream Communications, LLC	\$185,922.26
2014	33149	The Burke Center - West Austin Street	43144429	1457002	Windstream Communications, LLC	\$246,313.12
2014	33149	The Burke Center - West Austin Street	43144429	1457003	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457004	Windstream Communications, LLC	\$214,421.32
2014	33149	The Burke Center - West Austin Street	43144429	1457005	Windstream Communications, LLC	\$250,384.44

Appendix B

Appealed FY 2012 – 2016 FRNs

FY	HCP No.	HCP Name	FCC Form 465	FRN	SP Name	Estimated or Commitment Amount
2014	33149	The Burke Center - West Austin Street	43144429	1457006	Windstream Communications, LLC	\$192,820.90
2014	33149	The Burke Center - West Austin Street	43144429	1457007	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457008	Windstream Communications, LLC	\$192,820.90
2014	33149	The Burke Center - West Austin Street	43144429	1457010	Windstream Communications, LLC	\$214,421.32
2014	33149	The Burke Center - West Austin Street	43144429	1457011	Windstream Communications, LLC	\$180,493.97
2014	33149	The Burke Center - West Austin Street	43144429	1462644	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1462646	Windstream Communications, LLC	\$155,659.00
2014	33149	The Burke Center - West Austin Street	43144429	1465687	Windstream Communications, LLC	\$72,604.62
2014	26649	Trinity Valley Community College	43123240	1455788	Windstream Communications, LLC	\$39,846.00
2014	26649	Trinity Valley Community College	43123237	1455793	Windstream Communications, LLC	\$34,338.00
2014	26649	Trinity Valley Community College	43133868	1455796	Windstream Communications, LLC	\$34,338.00

Appendix B

Appealed FY 2012 – 2016 FRNs

FY	HCP No.	HCP Name	FCC Form 465	FRN	SP Name	Estimated or Commitment Amount
2014	26649	Trinity Valley Community College	43133868	1455797	Windstream Communications, LLC	\$232,020.00
2014	26649	Trinity Valley Community College	43133868	1455798	Windstream Communications, LLC	\$34,338.00
2014	26649	Trinity Valley Community College	43133868	1456124	Windstream Communications, LLC	\$392,226.48
2014	26649	Trinity Valley Community College	43133868	1456125	Windstream Communications, LLC	\$567,587.64
2014	26649	Trinity Valley Community College	43144511	1456126	Windstream Communications, LLC	\$392,224.08
2014	26649	Trinity Valley Community College	43144511	1456997	Windstream Communications, LLC	\$538,675.08
2014	26649	Trinity Valley Community College	43144511	1456998	Windstream Communications, LLC	\$281,820.00
2014	26649	Trinity Valley Community College	43144511	1462637	Windstream Communications, LLC	\$34,338.00
2014	26649	Trinity Valley Community College	43144511	1462640	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43133868	1578414	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43133868	1578415	Windstream Communications, LLC	\$34,338.00

Appendix B

Appealed FY 2012 – 2016 FRNs

FY	HCP No.	HCP Name	FCC Form 465	FRN	SP Name	Estimated or Commitment Amount
2015	26649	Trinity Valley Community College	43144511	1578416	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43144511	1578418	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43155659	1578419	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43155659	1578420	Windstream Communications, LLC	\$39,846.00
2016	33149	The Burke Center - West Austin Street	43144429	1697877	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697940	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697941	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697946	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697947	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697948	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697949	Windstream Communications, LLC	\$252,420.00

Appendix B

Appealed FY 2012 – 2016 FRNs

FY	HCP No.	HCP Name	FCC Form 465	FRN	SP Name	Estimated or Commitment Amount
2016	33149	The Burke Center - West Austin Street	43144429	1697953	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697954	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697958	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697959	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697960	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697961	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697963	Windstream Communications, LLC	\$252,420.00
2016	26649	Trinity Valley Community College	43123237	1698106	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43133868	1698108	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43133868	1698110	Windstream Communications, LLC	\$232,020.00
2016	26649	Trinity Valley Community College	43133868	1698112	Windstream Communications, LLC	\$567,587.64

Appendix B

Appealed FY 2012 – 2016 FRNs

FY	HCP No.	HCP Name	FCC Form 465	FRN	SP Name	Estimated or Commitment Amount
2016	26649	Trinity Valley Community College	43133868	1698118	Windstream Communications, LLC	\$392,224.08
2016	26649	Trinity Valley Community College	43133868	1698121	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43144511	1698125	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43144511	1698130	Windstream Communications, LLC	\$392,224.08
2016	26649	Trinity Valley Community College	43144511	1698134	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43155659	1698138	Windstream Communications, LLC	\$281,820.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1697880	Windstream Communications, LLC	\$604,020.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1698227	Windstream Communications, LLC	\$604,020.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1698229	Windstream Communications, LLC	\$604,020.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1698230	Windstream Communications, LLC	\$604,020.00

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Appendix B

Appealed FY 2012 – 2016 FRNs

FY	HCP No.	HCP Name	FCC Form 465	FRN	SP Name	Estimated or Commitment Amount
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1698233	Windstream Communications, LLC	\$597,702.00

EXHIBIT D to
Windstream Request for
Review (Aug. 23, 2018)

**Windstream Responses to December 23, 2016 Data Request
Request for Information for HCPs 26649, 33149 and 34447**

Questions to the Service Provider –Windstream Communications, LLC (Windstream)

(1) USAC previously requested a detailed, itemized list of all eligible charges included in each of the FRNs included in Appendix A. In response, you provided an excel spreadsheet, noting the monthly recurring charge (MRC) for each FRN, which appears to be compromised of the following:

- a. **Off Net Costs** – The charges listed in this column represent interconnection costs where we lease the connection to the customer premise from a 3rd party carrier. The lease is generally for a term of REDACTED that corresponds to the customer's contract with Windstream. REDACTED

Off-net indicates the connection is not on Windstream's network but is leased from another carrier. This is the cost charged from the 3rd party carrier and is the base cost for the location without mark-up or additional costs. Included are bill copies from the 3rd party carriers for each location to the costs listed here, if necessary. We will not be able to provide a further breakdown of these 3rd party costs as Windstream is not privy to pricing details from 3rd party carriers.

- b. **WIN A Location Chan Term** - reflects WIN's tariffed pricing in TX for termination of the circuit where WIN has either the originating or terminating end of the circuit.
- c. **On Transport Cost** – Windstream costs for the on net portion of the particular solution. On net indicates the connection is on Windstream's network.
- d. **Partner Commission** – Windstream uses Channel Partners (agents) as an extension of our sales team. Agents are compensated via residual commissions (typically REDACTED) for identifying and bringing a customer to Windstream.
- e. **Overhead Costs** – These are costs incurred as a result of providing services to customers, including billing, collections, repair, customer care, and other support functions. These costs are included in solutions for all end user customers.
- f. **Margin** – Revenue less expense – Windstream operates under a for profit business model.

(2) To determine whether the funding request is compliant with the FCC's rules for the RHC Telecom Program, USAC requires a further breakdown of the charges included in the MRC for each FRN listed in Appendix A. To that end, USAC again requests that you provide a detailed, itemized list of all charges included in the MRCs for each FRN. The detailed, itemized list should include all items and costs that are included in the MRC. USAC notes that the RHC Telecommunications Program only covers eligible, recurring telecommunications charges and not any equipment, build-out and/or infrastructure costs or other associated charges.

Windstream Response: see WIN Invoice Support – which includes the actual invoices paid to a 3rd party for portions of the network. No additional information is available.

(3) For each FRN listed in Appendix A, please explain how an urban rate of \$665 for was derived.

Windstream Response: Windstream receives a quote for a similar customer with the same type of services in the nearest urban area. For instance a customer has a 1 GIG fiber from AT&T as an underlying carrier, Windstream would use the pricing tool to get a quote based upon the nearest urban area requesting pricing for 1 GIG from AT&T.

(4) For each FRN listed in Appendix A, please provide documentation to support this urban rate, including, but not limited to, documentation that supports that the urban rate for the requested service is “no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service” in any city with a population of 50,000 or more in that state.⁵ Please include in your explanation how each HCP’s request for 1 Gigabyte per second Ethernet service is functionally similar to the service(s) used for purposes of this comparison.

Windstream Response: Utilizing the current Windstream pricing tool with REDACTED results in a pricing of REDACTED for a 1 Gig point to point circuit in the Dallas area. Discounts are standard practice in highly competitive markets such as Dallas TX. See Exhibit A for a screen shot of the pricing tool.

(5) For each FRN listed in Appendix A, please explain how the rural rate was derived.

Windstream Response: The total rural rate in column N (MRR) is based on the costs identified in questions 1A-1F with the values being listed as columns O to T in Appendix A

(6) Previously, you submitted what appears to be a commercial invoice to support the rural rate provided for each FRN. For each FRN listed in Appendix A, please explain how the monthly rural rates represents “the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided [by Windstream] in the rural area in which the [HCP] is located.”⁹ Please provide documentation to support this conclusion.

Windstream Response: To clarify, the WIN Invoice support are actual costs that WIN is paying to a 3rd party for the solution for this customer (See 1A above). Windstream does not have network here so we do not have comparative samples.

(7) If you do not provide similar or identical service in the rural area where the HCP is located, for each FRN listed in Appendix A, please explain how the monthly rural rate represents “the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area, over the same distance as the eligible service by other carriers.”¹⁰ Please provide documentation to support this conclusion.

Windstream Response: The rural rate is based on actual costs incurred by Windstream from an underlying provider (see 1a above) so they are based on actual incurred costs.

(8) If there are no such tariffed or publicly available rates, or if Windstream “reasonably determine[d] that this method for calculating the rural rate is unfair,” for each FRN listed in Appendix A, please provide documentation to show that Windstream submitted the monthly rural rate to the state commission (for intrastate rates) or to the Commission (for interstate rates) for approval.¹¹

Windstream Response: The method used to calculate pricing to the customer is consistent with how rates are determined for other customers.

Exhibit A

REDACTED

EXHIBIT E to
Windstream Request for
Review (Aug. 23, 2018)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Burke Center—West Austin Street)	CC Docket No. 02-60
Trinity Valley Community College)	
UTHSCT on behalf of ETHIN—Andrews Center)	
Request for Review of a Decision of the Universal)	
Service Administrator)	

REQUEST FOR REVIEW

Pursuant to 47 C.F.R. §§ 54.719(c), 54.720(a), The Burke Center—West Austin Street, Trinity Valley Community College, and The University of Texas Health Science Center at Tyler on behalf of the East Texas Interactive Healthcare Network (“ETHIN”)—Andrews Center (collectively, “UTHSC-Tyler” or “UTHSCT”) respectfully request that the Commission waive certain competitive bidding requirements and reverse certain Funding Commitment Decision Letters (“FCDLs”) issued by the Universal Service Administrative Co. (“USAC”) on March 13, 2017. The FCDLs denied funding under the Rural Health Care (“RHC”) Program for Funding Years 2012-2016 and were accompanied by a Further Explanation of the Administrator’s Decision (“Further Explanation”).¹ The FRNs that are the subject of these FCDLs are listed in Appendices A, B, and C of the Further Explanation.

¹ The Further Explanation is attached hereto as Exhibit A.

INTRODUCTION AND SUMMARY

UTHSCT hired a consultant, ABS Telecom, LLC (“ABS Telecom”), to manage an RHC-compliant procurement of high speed data services for the delivery of telemedicine services to clinical and academic centers in East Texas. Consistent with RHC program rules, ABS Telecom posted Forms 465 for the relevant services and provided all inquiring bidders with bid sheets for the services requested. While a number of vendors requested additional information about the projects, only one service provider, Windstream, submitted bids for the sites in question. Because Windstream was the only responsive bidder, UTHSCT selected it as the service provider for all sites. Unbeknownst to UTHSCT, ABS Telecom was apparently acting as a sales agent for Windstream at the same time. If that was indeed the case, ABS Telecom’s involvement in the procurement process would have violated the Commission’s competitive bidding rules.

The Commission has previously waived its competitive bidding rules when violations of those rules do not change the outcome of the procurement. The Commission should do the same in the instant case because: (1) ABS Telecom’s participation did not affect the outcome of the procurement; and (2) UTHSCT was unaware of, and did not benefit from, whatever vendor involvement may have occurred. Because only one service provider—Windstream—submitted bids on the projects, despite the fact that ABS Telecom responded to all bidder inquiries, any conflict of interest on the part of ABS Telecom could not have affected the outcome of the procurement. Because ABS Telecom’s alleged violation of the rules was unknown to UTHSCT and in no way outcome determinative, UTHSCT should not be punished for a conflict of interest of which it was unaware and from which it did not profit.

FACTS

Founded in 2001, the Northeast Texas Consortium (“NETnet”) obtains broadband network facilities for its members to deliver video-conferencing capabilities for training, educational, and healthcare delivery purposes as well as data capabilities for information access and resource sharing. NETnet supports the East Texas Interactive Healthcare Network, which provides connectivity between medical healthcare centers and healthcare education institutions in East Texas, including the Burke Mental Health Clinic (“Burke Center”), the Andrews Center Behavioral Healthcare System (“Andrews Center”), and the Trinity Valley Community College Health Science Center (“TVCC”). UTHSCT serves as the fiscal agent for and provides facilities and staffing for NETnet administration.

The Burke Center provides complete mental health services to adults and children in East Texas including a 24-hour crisis line, innovative counseling and therapy, and a state-of-the-art mental health emergency center in Lufkin, TX. Similarly, the Andrews Center is a non-profit, comprehensive mental health and intellectual and developmental disability center that provides services in a five-county area of East Texas. Finally, TVCC offers a wide range of clinical programs to train healthcare workers throughout East Texas.

Without access to the high bandwidth telecommunications services supported by the RHC Program, these institutions will likely be unable to transmit patient data or take advantage of telemedicine services, thereby limiting their ability to provide clinical care to their patient populations. As a result, the loss of RHC funding will have a serious adverse impact on the health and welfare of the citizens of East Texas, who are served by these institutions.

The Procurement in Question

In early 2011, UTHSCT (on behalf of NETnet and ETIHN) engaged a consultant, ABS Telecom, to assist UTHSCT with its RHC procurement. ABS Telecom represented that it was an expert in RHC procurements and did not disclose any conflicts of interest with service providers. Because UTHSCT lacked the knowledge and skills necessary to obtain RHC funding, ABS Telecom had sole responsibility to: (1) expertly manage a USAC-compliant procurement that would supply telecommunications services to clinical and academic centers at Andrews Center, Burke Center, and TVCC; and (2) properly prepare and file all USAC forms necessary to obtain RHC funding for these centers.

In carrying out its responsibilities, ABS Telecom prepared and timely filed the requisite Forms 465 generally advertising the need “to be able to stream media, provide internet access, telemedicine and link facilities for educational events such as Grand Rounds, Center for Disease Control satellite feeds and healthcare professional education.”²

A number of prospective bidders responded to these Forms 465 by requesting additional information regarding the projects. In particular, the Form 465 for the Burke Center attracted email inquiries from Rural Health Telecom and Network Services and a telephone inquiry from Windstream.³ In response to these inquiries, ABS Telecom emailed bid sheets to all three prospective bidders.⁴ Rural Health Telecom and

² See, e.g, FCC Form 465 for the Burke Center (Aug. 29, 2013). The Form 465 is attached hereto as Exhibit B.

³ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16), attached hereto as Exhibit C (page numbers added for convenience), at 2 for Burke Center (HCP #33148).

⁴ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16) at 2 for Burke Center (HCP #33148) and its Exhibits B, C, and D.

Network Services did not submit bids on this project and made no further contact with ABS Telecom. Only Windstream submitted a bid.⁵

Similarly, the Form 465 for the Andrews Center drew inquiries from two prospective bidders: Network Services by email and Windstream by telephone.⁶ ABS Telecom responded to these inquiries by emailing bid sheets to both Network Services and Windstream.⁷ Only Windstream submitted a bid.⁸

Finally, TVCC's Form 465 attracted email inquiries from Tel West and US Telecom Group and a telephone inquiry from Windstream.⁹ As it did for the Burke Center and Andrews Center inquiries, ABS Telecom responded to these bidder inquiries by emailing bid sheets to each of the prospective suppliers.¹⁰ US Telecom Group did not contact ABS Telecom after receiving information about the project and Tel West stated that it was not going to submit a bid. Again, Windstream was the only entity to bid on the project.¹¹

⁵ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16) at 2 for Burke Center (HCP #33148).

⁶ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16) at 4 for Andrews Center (HCP #34447).

⁷ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16) at 4 for Andrews Center (HCP #34447) and its Exhibits K and L.

⁸ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16) at 4 for Andrews Center (HCP #34447).

⁹ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16) at 3 for TVCC (HCP #26649).

¹⁰ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16) at 3 for TVCC (HCP #26649) and its Exhibits E, F, and G.

¹¹ See ABS Telecom Response to USAC on Behalf of UTHSCT (12/23/16) at 3 for TVCC (HCP #26649).

As noted above, Windstream was the only service provider that submitted bids in response to the Forms 465 for the Burke Center, Andrews Center, and TVCC projects. Faced with only one bidder, despite advertising the need for service in accordance with the RHC program rules, UTHSCT chose Windstream as the winning bidder.

UTHSCT did not know that anything was amiss in the Burke Center, Andrews Center, and TVCC RHC procurements until it received the USAC's Further Explanation on March 13, 2017 in which USAC alleged that ABS Telecom had a financial incentive to select Windstream as the winning bidder.¹² Specifically, the Further Explanation concluded that, because ABS Telecom was listed as a Data Vendor on Windstream's TVCC service schedule¹³ and was named as an "Elite Channel Partner" for 2014 on Windstream's website,¹⁴ ABS Telecom had a financial interest in selecting Windstream as the winning bidder.

Shortly after receiving the Further Explanation and based on an initial inquiry into the conflicts of interest alleged therein, UTHSCT terminated ABS Telecom as a consultant and agent. In addition, The University of Texas System ("UT System") Office of General Counsel requested a thorough investigation into the procurements that were the subject of the Further Explanation, including any actions taken by ABS Telecom. That investigation was conducted collaboratively by the UT System-wide Compliance Office and the UT System Audit Office, both of which are independent of UTHSCT. The

¹² Further Explanation at 6.

¹³ *Id.* at 7.

¹⁴ *Id.*

investigation is complete. The facts reflected in this Request for Review are either the result of, or corroborated by the results of, the investigation.

ARGUMENT

To the extent that, as alleged in the Further Explanation, ABS Telecom had a financial interest in naming Windstream as the winning bidder at the time of the procurements in question, UTHSCT requests a waiver of the Commission's rules prohibiting service provider involvement in the procurement process¹⁵ due to the following limited circumstances: the service provider involvement did not affect (indeed, could not have affected) the outcome of the procurement and the healthcare provider was unaware of, and did not benefit from, this conflict of interest.

The Standard for Rule Waiver

The Commission has the discretion to waive its rules "for good cause shown,"¹⁶ and may exercise such discretion "where particular facts make strict compliance inconsistent with the public interest."¹⁷ In considering requests for waiver, the FCC may consider "hardship, equity, or more effective implementation of overall policy" on an individual basis.¹⁸

¹⁵ See *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, Sixth Report and Order, 25 FCC Rcd 18762 ¶ 86 (2010): A program participant violates the competitive bidding rules if "a service provider representative is listed as the FCC Form 470 [or Form 465] contact person and that service provider is allowed to participate in the competitive bidding process ... [or] the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process."

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

¹⁸ *WAIT Radio*, 418 F.2d at 1159.

Such a waiver is appropriate under the instant circumstances, where any missteps or rule violations by UTHSCT's service provider or consultant could not, and did not, affect the results of the vendor selection process. The Commission has adopted an outcome-based standard for evaluating whether a rule waiver is justified, waiving its competitive bidding rules when a school or hospital has demonstrated that its technical violation of those rules did not change the outcome of the vendor selection process or distort the policy goal of these rules—selection of the most cost-effective vendor.

In *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Union Free School District*,¹⁹ for example, the Commission concluded that the appellants had demonstrated good cause for waiver of these rules when: "(1) their competitive bidding processes were not compromised by their violation of the Commission's competitive bidding requirements; and (2) the outcomes of their vendor selection processes were otherwise consistent with the policy goals underlying the Commission's competitive bidding rules."

Similarly, in *Review of Decisions of the Universal Service Administrator by La Joya Independent School District La Joya, TX*,²⁰ the Commission waived the rule mandating that the price of eligible services be the primary factor in selecting the winning bidder in E-rate procurements: "The record supports La Joya's argument that

¹⁹ *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Union Free School District, Central Islip, NY; Jennings School District, Jennings, MO; Schools and Libraries Universal Service, Support Mechanism, Order*, 29 FCC Rcd 2715, ¶ 1 (2014).

²⁰ *Requests for Review of Decisions of the Universal Service Administrator by La Joya Independent School District La Joya, TX; Schools and Libraries Universal Service Support Mechanism, Order*, 28 FCC Rcd 7866, ¶ 4 (2013).

the same vendor would have been selected for each funding request if the price of ineligible items had been excluded from the ‘price’ criterion.” The Commission reached the same conclusion in *Review of Decisions of the Universal Service Administrator by Coolidge Unified School District 21, Coolidge, AZ*,²¹ in which it held that “[a] comparison of the bid evaluation sheets for those items to the bid evaluation sheets for E-rate eligible items confirms that the winning vendor would have been the same if Coolidge had excluded the price of ineligible items from consideration.”

UTHSCT’s Request Satisfies the Standard for Waiver of the Rules

In accordance with the Commission’s waiver standard and prior Commission decisions applying that standard to similar circumstances, UTHSCT’s request for waiver should be granted. It is clear from the facts on which USAC relies that the service provider involvement in the bidding process did not change the outcome of the procurement and UTHSCT was unaware of, and did not benefit from, this conflict of interest.

First, there is no evidence that the procurement’s process or outcome was affected by any financial benefit UTHSCT’s consultant, ABS Telecom, may have been eligible to receive from the winning bidder, Windstream. As described above, ABS Telecom properly posted the Forms 465 advertising the need for service at the sites in question, the postings attracted interest from multiple potential bidders, and ABS Telecom provided any entity that responded to these postings with the information necessary to submit a bid. There is no evidence that ABS Telecom discouraged any

²¹ *Requests for Review of Decisions of the Universal Service Administrator by Coolidge Unified School District 21, Coolidge, AZ; Schools and Libraries Universal Service Support Mechanism*, Order, 28 FCC Rcd 16907, ¶ 4 (2013).

potential bidder from submitting a bid. Despite the public announcement of the procurement and bidder interest in participating, only one entity—Windstream—actually submitted bids on each project. Accordingly, UTHSCT's selection of Windstream as the winning service provider was inevitable, regardless of any alleged relationship between Windstream and ABS Telecom.

Second, UTHSCT was neither aware of nor benefited from ABS Telecom's conflict of interest nor does USAC cite any evidence to that effect. Indeed, as soon as the Further Explanation alleged service provider involvement in the procurement, UTHSCT immediately terminated its relationship with ABS Telecom and UT System launched a rigorous internal investigation into how the procurement was conducted and the relationship between ABS Telecom and Windstream.

CONCLUSION

For the reasons stated above, the Commission should grant UTHSCT's request for waiver of its competitive bidding rules and reverse USAC's denial of funding for the FRNs at issue in this appeal.

Respectfully Submitted,

/s/ Stephen J. Rosen
Stephen J. Rosen
Colleen Boothby
Levine, Blaszak, Block & Boothby
2001 L Street, NW, Suite 900
Washington, DC 20036
202-857-2550

Counsel to The University of Texas
Health Science Center at Tyler

May 12, 2017

CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R §§ 1.47 and 54.721(c), (d), I certify that a copy of the foregoing Request for Review was served upon the following individuals, by first class U.S. mail, postage prepaid, this 12th day of May 2017:

Universal Service Administrative Co.
Rural Health Care
Attn: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC 20005

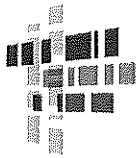
Mr. Matthew A. Brill
Latham & Watkins, LLP
Washington, D.C.
555 11th Street, NW, Suite 1000
Washington, D.C. 20004-1304
Counsel to Windstream Communications, LLC

Mr. Russell D. Lukas
LUKAS, LAFURIA, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102
Counsel to ABS Telecom, LLC

/s/ Amanda Delgado
Legal Assistant

EXHIBIT A

Further Explanation of the Administrator's Decision



Universal Service
Administrative Co.

FURTHER EXPLANATION OF THE ADMINISTRATOR'S DECISION

Via Electronic and Certified Mail

March 13, 2017

Ms. Darlene Flournoy
The Burke Center – West Austin Street
1401 W. Austin Street
Crockett, TX 75835

Ms. Darlene Flournoy
Trinity Valley Community College
100 Cardinal Drive
Athens, TX 75751

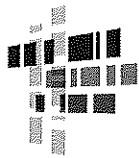
Ms. Darlene Flournoy
UTHSCT on behalf of ETIHN – Andrews Center
1174 East Lennon Avenue
Emory, TX 75440

Mr. Zachery Munger
Windstream Communications, LLC
1440 M street, 6th Floor
Lincoln, NE 68510

FCC Form 465 Nos.: 43144429, 43155674, 43133868, 43144511, 43123237, 43123240,
43155659, and 43155889
Funding Request Numbers (FRNs): See Appendices A, B, and C
Funding Years (FYs): 2012 - 2016

Dear Darlene Flournoy:

The Universal Service Administrative Company (USAC) is providing additional information regarding the reasons for its decision to deny funding for the above-referenced applications and FRNs submitted in the federal Universal Service Rural Health Care Telecommunications Program (RHC Telecom Program). As noted in the accompanying Denial Letter, based on USAC's review of the FY 2015 FRNs listed in Appendix A and the supporting documentation submitted by the following health care providers (HCPs) — The Burke Center –West Austin Street (Burke), Trinity Valley Community College (Trinity), and UTHSCT on behalf of ETIHN – Andrews Center (UTHSCT) (collectively, the



Universal Service
Administrative Co.

HCPs) — as well as Windstream Communications, LLC (Windstream),¹ USAC is unable to approve funding for these FRNs because the HCPs' selection of Windstream as the service provider for each of the FRNs was not the result of a fair and open competitive bidding process in violation of the Federal Communications Commission's (FCC or Commission) rules.² In addition, because the selection of Windstream for these FRNs was not the result of a fair and open competitive bidding process, USAC deems the underlying FCC Forms 465 that gave rise to these requests defective and, thereby, denies all other funding requests arising from these forms, including those FY 2012, 2013, 2014, and 2016 FRNs listed in Appendices B and C.³

Please be advised that the Denial Letter is an official action by USAC regarding these funding applications and requests. Please refer to the Denial Letter for instructions on how to appeal the decision to deny funding for these requests. A more detailed explanation of the reason for the denial follows.

I. Background

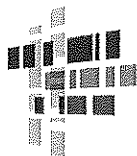
The RHC Telecom Program provides eligible HCPs with universal service support for the difference between the urban and rural rates for eligible telecommunications services, subject to limitations set forth in the Commission's rules.⁴ FCC rules require HCPs to competitively bid the requested services

¹ See generally Letter from Warren Lai, Member, CFT Filings LLC, to USAC (Jan. 5, 2017) (*HCP January 2017 Response*); Letter from Tim Loken, Director Regulatory Reporting, Windstream, to USAC (Jan. 6, 2017) (*Windstream January 2017 Response*).

² See *Requests for Review of Decisions of the Universal Service Administrator by Hospital Networks Management, Inc. Manchaca, Texas*, WC Docket No. 02-60, Order, 31 FCC Rcd 5731, 5733, para. 4 (2016) (*Hospital Networks Management Order*) (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076, para. 480 (1997) (subsequent history omitted) (requiring competitive bidding processes to be fair and open such that no bidders receive an unfair advantage). Cf. *Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45 *et al.*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (*Schools and Libraries Third Report and Order*) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *Request for Review by Mastermind Internet Services, Inc., et al.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028 (2000) (*Mastermind Order*) (finding that the FCC Form 470 contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); *Request for Review by Dickenson County Public Schools et al.*, CC Docket No. 96-45, 17 FCC Rcd 15747, 15748, para. 3 (2002) (noting that an applicant impairs its ability to hold a fair and open competitive bidding process when the applicant's FCC Form 470 contact person is also a service provider participating in the bidding process as a bidder)). See generally, 47 C.F.R. 54.603(a) (2015). To the extent USAC has provided funding for those FRNs listed in Appendix A, USAC will seek recovery of these funds and will issue a separate letter seeking recovery.

³ To the extent USAC has provided funding for those FRNs listed in Appendices B and C, USAC will seek recovery of these funds and will issue a separate letter seeking recovery.

⁴ See 47 C.F.R. §§ 54.602(a), 54.604(b) (2015).



and select the most cost-effective method of providing the requested service.⁵ Specifically, HCPs must make a bona fide request for eligible services by posting an FCC Form 465 to USAC's website for telecommunications carriers to review.⁶ HCPs must review all bids submitted in response to the FCC Form 465 and wait at least 28 days before entering into a service agreement with the selected service provider.⁷

The FCC further requires that the competitive bidding process be fair and open, and that the process not be compromised by improper conduct by the applicant, service provider, or both parties.⁸ Accordingly, a service provider participating in the competitive bidding process cannot be involved in the preparation of the FCC Form 465, request for proposal (RFP) or vendor selection process.⁹ Consultants or other parties working on behalf of the HCP who have an ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider are also prohibited from performing any of those tasks on behalf of the HCP.¹⁰ The FCC has further made clear that those individuals listed as the contact person on the FCC Forms 465 may not be affiliated with a service provider that participates in the bidding process as a bidder.¹¹ Indeed, the FCC has stated that any FCC Form 465 that lists as the contact person an employee or representative of a service provider that also participates in the bidding process as a bidder or is ultimately selected to provide the requested services should be deemed defective and any funding requests arising from that form denied.¹²

⁵ See 47 C.F.R. §§ 54.603(a), (b)(4), 54.615(a) (2015).

⁶ 47 CFR § 54.603 (2015); see also FCC Form 465, OMB 3060-0804 (Nov. 2012) (*FCC Form 465*).

⁷ 47 CFR § 54.603(b)(3) (2015).

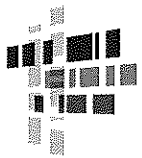
⁸ See *supra* note 2.

⁹ *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4 (citing *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket 02-6, 25 FCC Rcd 18762, 18799-800, para. 86 (2010) (*Schools and Libraries Sixth Report and Order*) ("an applicant violates the Commission's competitive bidding rules if the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process")).

¹⁰ *Id.* at 5733-34, para. 4 (citing *Requests for Review of the Decision of the Universal Service Administrator by SEND Technologies, L.L.C.*, CC Docket No. 02-6, Order, 22 FCC Rcd 4950 (Wireline Comp. Bur. 2007) (*SEND Order*) (finding that where the applicant's contact person is also a partial owner of the selected service provider, the relationship between the applicant and the service provider creates a conflict of interest and impedes fair and open competition)).

¹¹ *Id.* at 5742, para. 20 (citing *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket 02-6, 25 FCC Rcd 18762, 18799-800, para. 86 (2010) (*Schools and Libraries Sixth Report and Order*) ("an applicant violates the Commission's competitive bidding rules if the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process")).

¹² *Id.* (citing *Mastermind Order*, 16 FCC Rcd at 4032, para. 9).



Between April 16, 2016 and June 30, 2016, the HCPs submitted FY 2015 FCC Forms 466 for each of the FRNs listed in Appendix A, requesting support for 1 Gigabits per second (Gbps) Ethernet service from Windstream.¹³ On each of the FCC Forms 466, the HCPs indicated that they had received no bids in response to their FCC Forms 465.¹⁴ The HCPs did not provide any documentation related to their competitive bidding process with their requests.

On December 23, 2016, USAC requested that the HCPs describe the competitive bidding and bid evaluation process that resulted in the selection of Windstream to provide the requested service for each of the FRNs listed in Appendix A.¹⁵ In addition, USAC requested that, to the extent not already provided, the HCPs provide copies of all bids received, bid evaluation and vendor selection documentation (*e.g.*, score sheets, bid evaluation matrices), and any RFPs or other documents provided to prospective service providers.¹⁶ On the same day, USAC requested that Windstream explain the nature of certain costs associated with the monthly recurring charge (MRC) for each FRN, including “Partner Commissions” costs.¹⁷

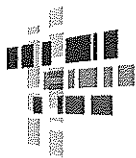
¹³ Burke submitted FY 2015 FCC Forms 466 for FRNs 1580117, 1580118, 1580121, 1580122, 1580123, 1580124, 1580125, 1580126, 1580127, 1580128, 1580129, 1580130, 1580131, and 1580132 on May 9, 2016 and a FY 2015 FCC Form 466 for FRN 1584689 on June 28, 2016. *See* FCC Forms 466 for FY 2015, Burke, FRNs 1580117, 1580118, 1580121, 1580122, 1580123, 1580124, 1580125, 1580126, 1580127, 1580128, 1580129, 1580130, 1580131, and 1580132 (May 9, 2016); FCC Form 466 for FY 2015, Burke, FRN 1584689 (June 28, 2016). Trinity submitted FY 2015 FCC Forms 466 for FRNs 1578411, 1578412, 1578413, 1578414, 1578415, 1578416, 1578417, 1578418, 1578419, 1578420, 1578421 on April 16, 2016 and a FY 2015 FCC Form 466 for FRN 1580115 on May 18, 2016. *See* FCC Forms 466 for FY 2015, Trinity, FRNs 1578411, 1578412, 1578413, 1578414, 1578415, 1578416, 1578417, 1578418, 1578419, 1578420, 1578421 (Apr. 16, 2016); FCC Form 466 for FY 2015, Trinity, FRN 1580115 (May 18, 2016). UTHSCT submitted FCC Forms 466 for FRNs 1575203, 1578408, 1578409, and 1578410 on April 16, 2016 and FRN 1584974 on June 30, 2016. FCC Form 466 for FY 2015, UTHSCT, FRNs 1575203, 1578408, 1578409, and 1578410 (Apr. 16, 2016); FCC Form 466 for FY 2015, UTHSCT, FRN 1584974 (June 30, 2016).

¹⁴ *See* FCC Forms 466 for FY 2015, Burke, FRNs 1580117, 1580118, 1580121, 1580122, 1580123, 1580124, 1580125, 1580126, 1580127, 1580128, 1580129, 1580130, 1580131, and 1580132 (May 9, 2016); FCC Form 466 for FY 2015, Burke, FRN 1584689 (June 28, 2016); FCC Forms 466 for FY 2015, Trinity, FRNs 1578411, 1578412, 1578413, 1578414, 1578415, 1578416, 1578417, 1578418, 1578419, 1578420, 1578421 (Apr. 16, 2016); FCC Form 466 for FY 2015, Trinity, FRN 1580115 (May 18, 2016); FCC Form 466 for FY 2015, UTHSCT, FRNs 1575203, 1578408, 1578409, and 1578410 (Apr. 16, 2016); FCC Form 466 for FY 2015, UTHSCT, FRN 1584974 (June 30, 2016).

¹⁵ *See* Email from Jeremy Matkovich, Program Analyst, USAC, to Darlene Flournoy, ETIHN Coordinator, Burke Center, Trinity, UTHSCT (Dec. 23, 2016) (*HCP Information Request*).

¹⁶ *See id.*

¹⁷ *See* Email from Jeremy Matkovich, Program Analyst, USAC, to Tim Loken, Director Regulatory Reporting, Windstream (Dec. 23, 2016) (*Windstream Information Request*). USAC also requested that Windstream provide an explanation of and documentation to support how the urban and rural rates for each FRN were derived. *Id.* Although Windstream responded to these requests, USAC does not address the merits of those arguments herein. In addition, regarding the “Partner Commissions” costs, USAC notes that Windstream previously submitted an itemized list of all charges included in the MRC for each FRN, which listed, among other items, “Partner Commissions.” *See* Email from Tim Loken, Director Regulatory Reporting, Windstream, to Carolyn McCornac, Director of Program Management, USAC (Nov. 9, 2016). Windstream provided the same itemized list of charges to



The HCPs responded to USAC's information request on January 5, 2017.¹⁸ In their response, the HCPs indicated that for each of the FRNs listed in Appendix A, "there was a public open bid window that lasted 28 days," during which Windstream was the only service provider that submitted bids.¹⁹ According to the HCPs, although other service providers requested information regarding the FCC Form 465 postings and were provided bid sheets during this period, none of these companies provided a quote, "nor did any other provider indicate an intent to submit a bid and request additional time to prepare such bid."²⁰ The HCPs further explained that, as the only service provider that submitted bids during the 28-day competitive bidding period, Windstream was the lowest cost provider; and, as a result, the HCPs awarded the contracts to Windstream.²¹ Moreover, although the HCPs provided a list of selection criteria to other service providers that requested information, the HCPs stated that no score sheets or bid evaluation matrices were used in the selection process as the HCPs only received one bid for each of the FRNs.²² In support of their assertions, the HCPs provided copies of email exchanges with the service providers that had submitted inquiries but no bids, as well as the bid sheets the HCPs provided to these service providers in response to their inquiries.²³ The HCPs did not, however, provide documentation demonstrating any exchanges with Windstream or copies of the bids submitted by Windstream during the competitive bidding period as requested.

Windstream responded to USAC's information request on January 6, 2017.²⁴ Regarding the "Partner Commissions" costs included in the itemized list of all charges, Windstream stated that these costs represent "residual commissions (typically 20% of the MRR)" paid to sales agents known as "Channel Partners" "for identifying and bringing a customer to Windstream."²⁵

II. Discussion

Based on our review of the information and documentation provided, we find that the HCPs' selection

USAC in response to USAC's request for a further breakdown of charges included in the MRC for each FRN listed in Appendix A. *See Windstream January 2017 Response*. USAC notes, however, that the itemized list only reflects a breakdown of charges for 24 of the 32 FRNs included in the Appendix. *Id.* The following FRNs are not reflected in the itemization: 1584689, 1578414, 1578415, 1578416, 1578418, 1578419, 1578420, and 1584974. *Id.*

¹⁸ *See generally HCP January 2017 Response*.

¹⁹ *Id.* at 1.

²⁰ *Id.*

²¹ *Id.*

²² *See id.*

²³ *See HCP January 2017 Response*, Exhibits B-L.

²⁴ *See generally Windstream January 2017 Response*.

²⁵ *Id.* at 1.

of Windstream as the service provider for each of the FRNs listed in Appendix A was not the result of a fair and open competitive bidding process in violation of the FCC's rules.²⁶ As noted above, FCC rules require HCPs to competitively bid the requested services and select the most cost-effective method of providing the requested service.²⁷ The FCC also requires that the competitive bidding process be fair and open, and that it not be compromised because of improper conduct by the HCP, service provider, or both parties.²⁸ This means that all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.²⁹ In the instant matter, as explained further below, USAC concludes that the relationship between Windstream and Mr. Gary Speck, the party who both filed the FCC Forms 465 on behalf of the HCPs and whose employer (i.e., ABS Telecom, LLC) was listed as a vendor on at least one of the HCPs' service agreements with Windstream, created a conflict of interest that undermined the competitive bidding process for all FRNs at issue in violation of the FCC's rules.³⁰ What is more, based on USAC's review, it appears Mr. Speck's employer received sales commissions from Windstream for identifying and bringing customers to it, which further tainted the competitive bidding process for all FRNs.³¹

Specifically, for each of the FRNs listed in Appendix A, the HCPs submitted FCC Forms 465 that listed Mr. Speck as both the HCP contact and certifying party, while ABS Telecom, LLC was listed as Mr. Speck's employer.³² As the contact listed on the FCC Forms 465, and as demonstrated in the email exchanges between the HCPs and service providers who requested bid sheets, it appears Mr. Speck was the only person that interfaced with all prospective bidders in response to their requests for bid sheets during the competitive bidding period.³³ At the same time, USAC's review and investigation revealed that Mr. Speck also had an apparent financial interest in the selection of Windstream as the service provider for the HCPs, as his employer, ABS Telecom, LLC, was listed as

²⁶ See *supra* note 2.

²⁷ See 47 C.F.R. §§ 54.603(a), (b)(4), 54.615(a) (2015).

²⁸ See *supra* note 2.

²⁹ *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4 (citing *Mastermind Order*, 16 FCC Rcd 4033, para. 10).

³⁰ See *id.* at 5733-34 (citations omitted); 47 C.F.R. § 54.603; see, e.g., Windstream Service Schedule for UTHSCT on behalf of ETHN (Mar. 19, 2012) (identifying ABS Telecom, LLC as a "Data Vendor"). USAC notes that ABS Telecom, LLC was listed as a vendor on Trinity's service schedule notices submitted to USAC. While the service schedule notices for both Burke and UTHSCT similarly include a field for the selected "Data Vendor," these fields were left blank. See, e.g., Windstream Service Schedule for Burke (Nov. 19, 2013).

³¹ See *Windstream January 2017 Response* at 1.

³² See, e.g., FCC Form 465 for FY 2015, Burke, at 1-2, Lines 16-17, 39-41 (June 1, 2015). Mr. Speck is listed as a "Managing Partner" for ABS Telecom, LLC.

³³ See *HCP January 2017 Response*, Exhibits B-L.



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one of Windstream's "Data Vendors" on the service schedule notices for Trinity.³⁴

Moreover, in its response to USAC's December 23, 2016 information request, Windstream indicated that its MRC for each of the FRNs listed in Appendix A included "residual commissions" paid to "Channel Partners (agents)" as compensation "for identifying and bringing a customer to Windstream."³⁵ According to Windstream's website, Windstream's network of Channel Partners, which includes "Data Vendors," markets Windstream's products and services.³⁶ In fact, ABS Telecom, LLC, the entity for which Mr. Speck is managing partner, was named one of Windstream's "Elite Channel Partners" in 2014.³⁷

Based on the record and application of FCC precedent, USAC finds that Mr. Speck's role as the contact person listed on the FCC Forms 465 and affiliation with Windstream undermined fair and open competitive bidding for all FRNs listed in Appendix A. Indeed, it is precisely this type of relationship between an HCP's contact person and a service provider that is prohibited by the FCC's rules given the contact person's ability to influence an HCP's competitive bidding process by controlling the dissemination of information and potentially discouraging prospective bidders from submitting bids or excluding them from the process altogether.³⁸ Accordingly, USAC deems the FCC Forms 465 defective and denies all funding requests arising from these forms as listed in Appendices A, B, and C.

Conclusion

Based on the information and documentation provided, USAC is unable to approve RHC Telecom Program support for the FY 2012 through 2016 FRNs listed in Appendices A, B, and C.³⁹ Accompanying this letter is the Denial Letter denying funding for the FRNs referenced above. If you wish to appeal that decision, please refer to the instructions included in the Denial Letter for submitting an appeal.

Sincerely,

³⁴ See, e.g., Windstream Service Schedule for UTHSCT on behalf of ETIHN (Mar. 19, 2012) (identifying ABS Telecom, LLC as a "Data Vendor").

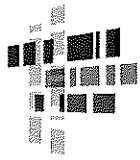
³⁵ *Windstream January 2017 Response* at 1.

³⁶ See Windstream Website, Channel Program, available at <http://www.windstreambusiness.com/company/partner-programs/channel-partner-program> (last visited Mar. 7, 2017).

³⁷ See Windstream Website, Windstream Names 2014 Elite Channel Partners, available at <http://www.channelpartneronline.com/news/2015/03/windstream-names-2014-elite-channel-partners.aspx> (last visited Mar. 7, 2017).

³⁸ See *Hospital Networks Management Order*, 31 FCC Rcd at 5740 (citations omitted).

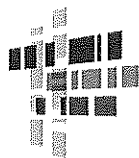
³⁹ To the extent USAC has provided funding for any of these FRNs, USAC will seek recovery of these funds and will issue a separate letter seeking recovery.



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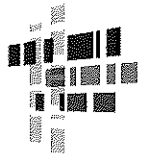
Craig Davis

Vice President, Rural Health Care Division



Appendix A – FY 2015 FRNs

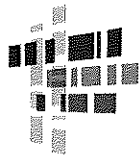
HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Rural Rate	Urban Rate
33149	The Burke Center - West Austin Street	43144429	1580117	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580118	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580121	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580122	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580123	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580124	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580125	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580126	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580127	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580128	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580129	Windstream Communications, LLC	\$21,700.00	\$665.00



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HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Rural Rate	Urban Rate
33149	The Burke Center - West Austin Street	43144429	1580130	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580131	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43144429	1580132	Windstream Communications, LLC	\$21,700.00	\$665.00
33149	The Burke Center - West Austin Street	43155674	1584689	Windstream Communications, LLC	\$22,870.00	\$665.00
26649	Trinity Valley Community College	43133868	1578411	Windstream Communications, LLC	\$20,000.00	\$665.00
26649	Trinity Valley Community College	43133868	1578412	Windstream Communications, LLC	\$47,963.97	\$665.00
26649	Trinity Valley Community College	43133868	1578413	Windstream Communications, LLC	\$33,350.34	\$665.00
26649	Trinity Valley Community College	43133868	1578414	Windstream Communications, LLC	\$3,526.50	\$665.00
26649	Trinity Valley Community College	43133868	1578415	Windstream Communications, LLC	\$3,526.50	\$665.00
26649	Trinity Valley Community College	43144511	1578416	Windstream Communications, LLC	\$3,526.50	\$665.00
26649	Trinity Valley Community College	43144511	1578417	Windstream Communications, LLC	\$33,350.34	\$665.00
26649	Trinity Valley Community College	43144511	1578418	Windstream Communications, LLC	\$3,526.50	\$665.00

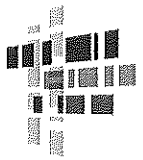
HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Rural Rate	Urban Rate
26649	Trinity Valley Community College	43123237	1578419	Windstream Communications, LLC	\$3,526.50	\$665.00
26649	Trinity Valley Community College	43123240	1578420	Windstream Communications, LLC	\$3,985.50	\$665.00
26649	Trinity Valley Community College	43155659	1578421	Windstream Communications, LLC	\$24,150.00	\$665.00
26649	Trinity Valley Community College	43155659	1580115	Windstream Communications, LLC	\$45,554.59	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1575203	Windstream Communications, LLC	\$51,000.00	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1578408	Windstream Communications, LLC	\$51,000.00	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1578409	Windstream Communications, LLC	\$51,000.00	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1578410	Windstream Communications, LLC	\$51,000.00	\$665.00
34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1584974	Windstream Communications, LLC	\$50,473.50	\$665.00



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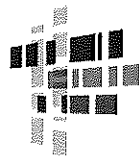
Appendix B – FY 2016 FRNs

FUND YEAR	HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	ESTIMATED AMT
2016	33149	The Burke Center - West Austin Street	43144429	1697877	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697940	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697941	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697946	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697947	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697948	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697949	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697953	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697954	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697958	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697959	Windstream Communications, LLC	\$252,420.00



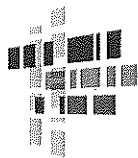
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FUND YEAR	HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	ESTIMATED AMT
2016	33149	The Burke Center - West Austin Street	43144429	1697960	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697961	Windstream Communications, LLC	\$252,420.00
2016	33149	The Burke Center - West Austin Street	43144429	1697963	Windstream Communications, LLC	\$252,420.00
2016	26649	Trinity Valley Community College	43123237	1698106	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43133868	1698108	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43133868	1698110	Windstream Communications, LLC	\$232,020.00
2016	26649	Trinity Valley Community College	43133868	1698112	Windstream Communications, LLC	\$567,587.64
2016	26649	Trinity Valley Community College	43133868	1698118	Windstream Communications, LLC	\$392,224.08
2016	26649	Trinity Valley Community College	43133868	1698121	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43144511	1698125	Windstream Communications, LLC	\$34,338.00
2016	26649	Trinity Valley Community College	43144511	1698130	Windstream Communications, LLC	\$392,224.08
2016	26649	Trinity Valley Community College	43144511	1698134	Windstream Communications, LLC	\$34,338.00



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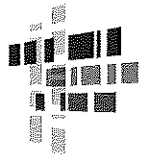
FUND YEAR	HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	ESTIMATED AMT
2016	26649	Trinity Valley Community College	43155659	1698138	Windstream Communications, LLC	\$281,820.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1697880	Windstream Communications, LLC	\$604,020.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1698227	Windstream Communications, LLC	\$604,020.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1698229	Windstream Communications, LLC	\$604,020.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1698230	Windstream Communications, LLC	\$604,020.00
2016	34447	UTHSCT on behalf of ETIHN - Andrews Center	43155889	1698233	Windstream Communications, LLC	\$597,702.00



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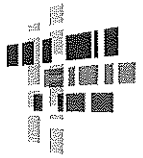
Appendix C – FY 2012 – 2014 FRNs

FUND YEAR	HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Commitment Amount
2014	33149	The Burke Center - West Austin Street	43144429	1456999	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457000	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457001	Windstream Communications, LLC	\$185,922.26
2014	33149	The Burke Center - West Austin Street	43144429	1457002	Windstream Communications, LLC	\$246,313.12
2014	33149	The Burke Center - West Austin Street	43144429	1457003	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457004	Windstream Communications, LLC	\$214,421.32
2014	33149	The Burke Center - West Austin Street	43144429	1457005	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457006	Windstream Communications, LLC	\$192,820.90
2014	33149	The Burke Center - West Austin Street	43144429	1457007	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1457008	Windstream Communications, LLC	\$192,820.90
2014	33149	The Burke Center - West Austin Street	43144429	1457010	Windstream Communications, LLC	\$214,421.32



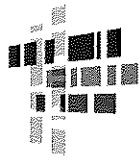
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FUND YEAR	HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Commitment Amount
2014	33149	The Burke Center - West Austin Street	43144429	1457011	Windstream Communications, LLC	\$180,493.97
2014	33149	The Burke Center - West Austin Street	43144429	1462644	Windstream Communications, LLC	\$250,384.44
2014	33149	The Burke Center - West Austin Street	43144429	1462646	Windstream Communications, LLC	\$155,659.00
2014	33149	The Burke Center - West Austin Street	43144429	1465687	Windstream Communications, LLC	\$72,604.62
2012	26649	Trinity Valley Community College	43123237	1210028	Windstream Communications, LLC	\$28,615.00
2012	26649	Trinity Valley Community College	43123237	1210032	Windstream Communications, LLC	\$28,615.00
2012	26649	Trinity Valley Community College	43123240	1210038	Windstream Communications, LLC	\$33,205.00
2013	26649	Trinity Valley Community College	43123237	1332019	Windstream Communications, LLC	\$34,338.00
2014	26649	Trinity Valley Community College	43123240	1455788	Windstream Communications, LLC	\$39,846.00
2014	26649	Trinity Valley Community College	43123237	1455793	Windstream Communications, LLC	\$34,338.00
2014	26649	Trinity Valley Community College	43133868	1455796	Windstream Communications, LLC	\$34,338.00
2014	26649	Trinity Valley Community College	43133868	1455797	Windstream Communications, LLC	\$232,020.00



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FUND YEAR	HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Commitment Amount
2014	26649	Trinity Valley Community College	43133868	1455798	Windstream Communications, LLC	\$34,338.00
2014	26649	Trinity Valley Community College	43133868	1456124	Windstream Communications, LLC	\$392,226.48
2014	26649	Trinity Valley Community College	43133868	1456125	Windstream Communications, LLC	\$567,587.64
2014	26649	Trinity Valley Community College	43144511	1456126	Windstream Communications, LLC	\$392,224.08
2014	26649	Trinity Valley Community College	43144511	1456997	Windstream Communications, LLC	\$538,675.08
2014	26649	Trinity Valley Community College	43144511	1456998	Windstream Communications, LLC	\$281,820.00
2014	26649	Trinity Valley Community College	43144511	1462637	Windstream Communications, LLC	\$34,338.00
2014	26649	Trinity Valley Community College	43144511	1462640	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43133868	1578414	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43133868	1578415	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43144511	1578416	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43144511	1578418	Windstream Communications, LLC	\$34,338.00



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FUND YEAR	HCP NUMBER	HCP NAME	465 No.	FRN	SP NAME	Commitment Amount
2015	26649	Trinity Valley Community College	43155659	1578419	Windstream Communications, LLC	\$34,338.00
2015	26649	Trinity Valley Community College	43155659	1578420	Windstream Communications, LLC	\$39,846.00

EXHIBIT B

FCC Form 465 for the Burke Center (Aug. 29, 2013)

Health Care Providers Universal Service
Description of Services Requested & Certification Form

Read instructions thoroughly before completing this form. Failure to comply may cause delayed or denied funding.

Form 465 Application Number (assigned by RHCD) 43137856

Block 1: HCP Location Information

Information required in this block applies to the **physical location** of the HCP. Do not enter a "PO Box" or "Rural Route" address.

1 HCP Number 33149		2 Consortium Name	
3 HCP Name The Burke Center - West Austin Street		4 HCP FCC Registration Number (FCC RN) 0020953857	
5 Contact Name Darlene Flournoy			
6 Address Line 1 1401 W. Austin Street			
7 Address Line 2		8 County Houston	
9 City Crockett		10 State TX	11 ZIP Code 75835
12 Phone # (903) 877-1210	13 Fax # (903) 877-1230	14 E-mail darlene.flournoy@netnet.org	

Block 2: HCP Mailing Contact Information

15 Is the HCP's mailing address (where correspondence should be sent) different from its physical location described in Block 1?		<input checked="" type="checkbox"/> Yes, complete Block 2
		<input type="checkbox"/> No, go to Block 3.
16 Contact Name Gary Speck		17 Organization ABS Telecom LLC
18 Address Line 1 6505 West Park Blvd.		
19 Address Line 2 Suite 306, PMB 130		
20 City Plano		21 State TX
		22 ZIP Code 75093
23 Phone # (972) 407-0063	24 Fax # (214) 291-5901	25 E-mail gary@abstelecom.net

Block 3: Funding Year Information

26 Funding Year (Check only one box)		
<input checked="" type="checkbox"/> Year 2013 (7/1/2013-6/30/2014)	<input type="checkbox"/> Year 2014 (7/1/2014-6/30/2015)	<input type="checkbox"/> Year 2015 (7/1/2015-6/30/2016)

Block 4: Eligibility

27 Only the following types of HCPs are eligible. Indicate which category describes the applicant. (Check only one.)	
<input type="checkbox"/> Post-secondary educational institution offering health care instruction, teaching hospital or medical school	<input type="checkbox"/> Rural health clinic
<input type="checkbox"/> Community health center or health center providing health care to migrants	<input type="checkbox"/> Consortium of the above
<input type="checkbox"/> Local health department or agency	<input type="checkbox"/> Dedicated ER of rural, for-profit hospital
<input checked="" type="checkbox"/> Community mental health center	<input type="checkbox"/> Part-time eligible entity
<input type="checkbox"/> Not-for-profit hospital	

28 If consortium, dedicated emergency department, or part-time eligible entity was selected in Line 27, please describe the entity.

29 Please describe the eligible health care provider's telecommunications and/or Internet service needs, so that service providers may bid to provide the services. The description should describe whether video or store and forward consultations will be used, whether large image files or X-rays will be transmitted, the quality of connection needed, or other relevant considerations. Need to be able to stream media, provide internet access, telemedicine and link facilities for educational events such as Grand Rounds, Center for Disease Control satellite feeds and healthcare professional education.

Block 5: Request for Services

30 Is the HCP requesting reduced rates for:		
<input checked="" type="checkbox"/> Both Telecommunications & Internet Services	<input type="checkbox"/> Telecommunications Service ONLY	<input type="checkbox"/> Internet Service ONLY

Block 6: Certification

31 <input checked="" type="checkbox"/> I certify that I am authorized to submit this request on behalf of the above-named entity or entities, that I have examined this request, and that to the best of my knowledge, information, and belief, all statements of fact contained herein are true.	
32 <input checked="" type="checkbox"/> I certify that the health care provider has followed any applicable State or local procurement rules.	
33 <input checked="" type="checkbox"/> I certify that the telecommunications services and/or Internet access charges that the HCP receives at reduced rates as a result of the HCPs' participation in this program, pursuant to 47 U.S.C. Sec. 254 as implemented by the Federal Communications Commission, will be used solely for purposes reasonably related to the provision of health care service or instruction that the HCP is legally authorized to provide under the law of the state in which the services are provided and will not be sold, resold, or transferred in consideration for money or any other thing of value.	
34 <input checked="" type="checkbox"/> I certify that the health care provider is a non-profit or public entity.	
35 <input checked="" type="checkbox"/> I certify that the health care provider is located in a rural area. Visit the RHCD website: (http://www.usac.org/rhc/tools/rhcd/Rural/2005/search.asp) or contact RHCD at 1-800-229-5476 for a listing of rural areas.	
36 <input checked="" type="checkbox"/> Pursuant to 47 C.F.R. Secs. 54.601 and 54.603, I certify that the HCP or consortium that I am representing satisfies all of the requirements herein and will abide by all of the relevant requirements, including all applicable FCC rules, with respect to funding provided under 47 U.S.C. Sec. 254.	
37 Signature Electronically signed	38 Date 29-Aug-2013
39 Printed name of authorized person Gary Speck	40 Title or position of authorized person Managing Partner
41 Employer of authorized person ABS Telecom, LLC	42 Employer's FCC RN 0019425636

Please remember:

- ♦ Form 465 is the **first** step a health care provider must take in order to receive the benefit of reduced rates resulting from participation in this universal service support program.
- ♦ After the HCP submits a complete and accurate Form 465, the RHCD will post it on the RHCD web site for 28 days.
- ♦ HCPs may not enter into agreements to purchase eligible services from service providers before the **28 days expire**.
- ♦ After the HCP selects a service provider, the HCP must initiate the **next** step in the application process, the filing of Form 466 and/or 466A.

Persons willfully making false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

FCC NOTICE FOR INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

Part 3 of the Commission's Rules authorize the FCC to request the information on this form. The purpose of the information is to determine your eligibility for certification as a health care provider. The information will be used by the Universal Service Administrative Company and/or the staff of the Federal Communications Commission, to evaluate this form, to provide information for enforcement and rulemaking proceedings and to maintain a current inventory of applicants, health care providers, billed entities, and service providers. No authorization can be granted unless all information requested is provided. Failure to provide all requested information will delay the processing of the application or result in the application being returned without action. Information requested by this form will be available for public inspection. Your response is required to obtain the requested authorization.

The public reporting for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PER, Paperwork Reduction Act Project (3060-0804), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to pra@fcc.gov. PLEASE DO NOT SEND YOUR RESPONSE TO THIS ADDRESS.

Remember - You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0804.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, PUBLIC LAW 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

This form should be submitted to:

Rural Health Care Division
30 Lanidex Plaza West, P.O.Box 685
Parsippany NJ 07054-0685

EXHIBIT C

ABS Telecom Response to USAC on Behalf of UTHSCT

(12/23/16) (page numbers added for convenience)

Response to USAC Inquiry dated 12/23/2016

(1) For each FRN listed in Appendix A, please describe the competitive bidding and bid evaluation process that resulted in the selection of Windstream Communications, LLC (Windstream) to provide the requested service(s).

The competitive bidding and bid evaluation process followed the same guidelines for each of the FRNs referenced in Appendix A. The Form 465 was initially posted for each of the FRNs on the dates listed on the attached spreadsheet entitled Form 465 Filing Chart, attached hereto as Exhibit A. Please note the posting date and ACSD for the initial Form 465 for HCP #26649 (referred to as TVCC) dates back to 2011, prior to the online filing system.

In 2015, the contracts for all the circuits except for one for each of the HCPs referenced in the inquiry had been determined to be Evergreen. The dates of such determinations are also listed on Exhibit A under the column labeled "Evergreen" for ease of reference. If the contract was not Evergreen, it is annotated with "N/A" in that column. In order to address the initial selection of Windstream as the provider, we have included all Form 465s filed for each of the referenced FRNs from the initial filings through Funding Year 2015. The contract date for each of the FRNs is listed under the "Contract Signed" column on Exhibit A.

For each Form 465 listed on Exhibit A, there was a public open bid window that lasted 28 days. During the open bid period, any company requesting information or a bid sheet was contacted by phone or email within 24 hours, and a copy of the bid sheet was provided to the requester within that same time frame.

Windstream was the only provider that ever submitted a bid on any of the circuits referenced by Appendix A through the end of Funding Year 2015. Other requestors of information were provided with the bid sheet. None of these companies ever provided a quote, nor did any other provider indicate an intent to submit a bid and request additional time to prepare such bid.

At the end of the initial 28 day open bid window for each of the FRNs listed on Appendix A, the only bid received was from Windstream. As the only provider willing to contract for service at these locations, they were the lowest cost provider, and they were awarded the contracts. Although the list of selection criteria was provided to each requestor, score sheets and bid evaluation matrices were not required as there was only one bid.

Due to the continued lack of bidders in the region, the HCPs opted to provide the entire list of locations each time they posted a Form 465 in order to determine if lower pricing had become available, regardless of USAC's Evergreen determination for the location. Through the end of Funding Year 2015, there was never an alternate bid submitted by any provider to compare against Windstream.

After the initial open bid period for any circuit, the HCP reviewed the bid received from Windstream, and entered into contracts for services. The initial ACSD and Contract Dates for each FRN are noted on Exhibit A for ease of reference.

In the case of TVCC, the initial Form 465 was posted on May 5, 2011. Bids were received through mid June, when the HCP selected Windstream, the only bidder, and they began contract negotiations. The HCP and Windstream legal teams spent over nine months working out the language in the contracts. Due to the lengthy drafting process, the ACSD is many months before the signing of the contracts, and in some cases, was just prior to the second Form 465 (for Funding Year 2012) being posted. Since none of the contracts were deemed Evergreen, all locations were provided to any requestor of any of the TVCC Form 465s in Funding Year 2012. They were also provided to any requestor in the 2013-2015 Funding Years.

Additionally, due to the remote location of the HCPs referenced by this inquiry, some of the installation periods for service took over a year and rolled to the next RHC funding year. In those cases, a Form 466 could not be filed for the initial filing year annotating the selection of the provider as service had not yet begun. Therefore, a new Form 465 was posted, all sites were again provided to any requesting service provider. You will note in these cases, there is a large gap between the Contract Date and the Install Date, as documented on Exhibit A.

(2) To the extent not already provided to USAC, for each FRN listed in Appendix A, please provide copies of all bids received, bid evaluation and vendor selection documentation (e.g. score sheets, bid evaluation matrices) and any requests for proposals or other documents provided to prospective service providers concerning the requested service(s).

HCP #33148 (The Burke Center)

a. FRN #s 1580117, 1580118, 1580121, 1580123, 1580124, 1580125, 1580126, 1580127, 1580128, 1580129, 1580131 and 1580132.

Bids for service for the above referenced FRNs were initially solicited via Form 465 posted on 8/29/2013. During the 28 day open bid window, there were three requests for bid sheets - two via email from Rural Health Telecom and Network Services, the third via phone from Windstream. Proposals were provided to all three the same day the request was received. Copies of the emailed responses and the bid sheet are attached hereto as Exhibits B, C, and D, respectively.

Bids in response to the bid sheets provided were only received from Windstream. Rural Health Telecom and Network Services had no additional contact after the initial request.

The locations were again provided to any requestors in response to the 2/28/14 Form 465, posted to add two additional sites. Only Windstream requested the bid sheet and, ultimately, submitted a bid.

b. FRN #s 1580122 and 1580130.

Bids for service for the two above referenced FRNs were initially requested via the 2/28/14 Form 465. Windstream requested the bid sheet telephonically, and was the only provider who requested the bid sheet. Windstream's bid (the only bid) was selected after the 3/28/14 ACSD.

c. FRN #1584689.

Bids for service for the above referenced FRN was initially requested via the Form 465 posted on 3/2/15. Windstream requested the bid sheet telephonically, and was ultimately the only provider who requested the bid sheet. Windstream's bid (the only bid) was selected after the 3/30/14 ACSD, and the contract was signed on 5/1/15.

HCP #26649 (TVCC)

a. FRN #s 1578411, 1578412, 1578413, 1578414, 1578415, 1578416, 1578417, 1578418, 1578419, 1578420, 1578421 and 1580115.

Bids for service for the above referenced FRNs were initially solicited via Form 465, filed via mail prior to the online filing process, via packets that were posted for bidding on 5/5/2011. During the 28 day open bid window, there were three requests for bid sheets - via email from US Telecom Group and Tel West, and via phone from Windstream. Proposals were provided to all three the same day the request was received. Copies of the emailed responses and the bid sheet are attached hereto as Exhibits E, F, and G, respectively.

Bids in response to the bid sheets provided were only received from Windstream. US Telecom Group had no additional contact after the initial request, and Tel West ultimately responded that they were not going to bid on the project. Windstream provided a bid for all of the above referenced FRNs. As Windstream was the only bidder, they were selected and contract negotiations began in late June 2011. As mentioned earlier, contract negotiations continued for nine months, thus explaining the delay between the selection of Windstream and the execution of contracts.

Form 465s were posted in April 2012 for the 2012 Funding Year, on May 16, 2013 for the 2013 Funding Year, May 29, 2014 for the 2014 Funding Year and June 1, 2015 for the 2014 Funding Year. Each year, several of the above referenced FRNs were deemed to be Evergreen contracts. However, in any years when a provider requested a copy of the bid sheet, a list of all the locations for the above referenced FRNs were provided regardless of Evergreen determination.

In response to the Form 465 for the 2012 Funding Year, Earthlink requested a bid sheet. The consultant had a telephone conversation with the Earthlink representative regarding the sites, the requested information was provided during the call. They did not submit a bid. The proposal request is attached hereto as Exhibit H.

In response to the Form 465 filed on May 16 for the 2013 Funding Year, only Network Services requested the bid sheet, a copy of which was emailed to them within 24 hours. They did not submit a bid for services. The proposal request and bid sheet are attached hereto as Exhibits I and J, respectively.

There were no requests for bid sheets in response to either the 2014 or 2015 funding year Form 465s.

HCP #34447 (Andrews Center)

a. FRN #s 1575203, 1578408, 1578409 and 1578410.

Bids for service for the above referenced FRNs were initially solicited via Form 465 posted on 12/13/2013. During the 28 day open bid window, there were two requests for bid sheets - via email from Network Services, the via phone from Windstream. Bid sheets with selection criteria were provided to all each requesting provider the same day the request was received. Copies of the emailed response and the bid sheet are attached hereto as Exhibits K and L, respectively.

Bids in response to the bid sheets provided were only received from Windstream. Network Services did not submit a bid.

b. FRN # 1584974 (Diverse Route).

Bids for service for the above referenced FRN was initially requested via the Form 465 posted on 6/2/2015. Windstream requested the bid sheet telephonically, and was ultimately the only provider who requested the bid sheet. Windstream's bid (the only bid) was selected after the 6/30/2015 ACSD, and the contract was signed on 8/19/2015.

Exhibit A

BUNKE CENTER #33149															
FRN	SITE	Initial 465 Filed FY 2013	Form 465 # FY 2013	Initial ACSD	Contract Signed	Install Date	Evergreen	2nd 465 Filed FY 2014	Form 465 # FY 2014	3rd 465 Filed FY 2015	Form 465 # FY 2015	Notes			
1580117	San Augustine	8/29/2013	43137856	9/27/2013	11/25/2013	8/26/2014	3/18/2015	5/29/2014	43144429	Automatic	43144429				
1580118	2105 John Redditt	8/29/2013	43137856	9/27/2013	11/25/2013	7/4/2014	3/18/2015	5/29/2014	43144429	Automatic	43144429				
1580121	Mayo Place	8/29/2013	43137856	9/27/2013	11/25/2013	7/4/2014	3/11/2015	5/29/2014	43144429	Automatic	43144429				
1580122	Jasper (Marvin Hancock)	2/28/2014	43140994	3/28/2014	5/12/2014	3/18/2015	8/19/2015	5/29/2014	43144429	Automatic	43155674	Evergreen from 2014 filing after 2015 open bid			
1580123	Old Mill	8/29/2013	43137856	9/27/2013	11/25/2013	7/4/2014	3/18/2015	5/29/2014	43144429	Automatic	43144429				
1580124	Medford Dr	8/29/2013	43137856	9/27/2013	11/25/2013	7/4/2014	3/11/2015	5/29/2014	43144429	Automatic	43144429				
1580125	Homer Alto	8/29/2013	43137856	9/27/2013	11/25/2013	10/6/2014	3/11/2015	5/29/2014	43144429	Automatic	43144429				
1580126	Hwy 271 Tyler	8/29/2013	43137856	9/27/2013	11/25/2013	9/26/2014	3/11/2015	5/29/2014	43144429	Automatic	43144429				
1580128	Kirbyville (Margaret)	8/29/2013	43137856	9/27/2013	11/25/2013	9/26/2014	3/11/2015	5/29/2014	43144429	Automatic	43144429				
1580129	Stallings	8/29/2013	43137856	9/27/2013	11/25/2013	8/26/2014	3/11/2015	5/29/2014	43144429	Automatic	43144429				
1580130	Angelina Clinic (Frank St)	2/28/2014	43140994	3/28/2014	5/12/2014	11/19/2014	6/10/2015	5/29/2014	43144429	Automatic	43155674	Evergreen from 2014 filing after 2015 open bid			
1580131	Livingston	8/29/2013	43137856	9/27/2013	12/20/2013	7/4/2014	6/10/2015	5/29/2014	43144429	Automatic	43155674	Evergreen from 2014 filing after 2015 open bid			
1580132	North Street	8/29/2013	43137856	9/27/2013	11/25/2013	10/14/2014	3/11/2015	5/29/2014	43144429	Automatic	43144429				
1584689	2211 John Redditt	N/A	N/A	3/30/2015	5/1/2015	10/21/2015	N/A	3/2/2015	43151501	Automatic	43155674				
TYCC	#26649														
FRN	SITE	Initial 465 Filed (Paper Filing) FY 2011	Form 465 # (Paper Filing) FY 2011	Initial ACSD	Contract Signed	Install Date	Evergreen	2nd 465 Filed FY 2012	Form 465 # FY 2012	3rd 465 Filed FY 2013	Form 465 # FY 2013	4th 465 Filed FY 2014	Form 465 # FY 2014	5th 465 Filed FY 2015	Form 465 # FY 2015
1578411	Lufkin	5/5/2011	Packet	6/3/2011	7/25/2012	4/24/2013	2/24/2014	4/17/2012	43122955	5/16/2013	43133868	Automatic	43133868	Automatic	43133868
1578412	2100 Loop 256	5/5/2011	Packet	6/3/2011	6/19/2012	11/15/2012	5/13/2014	4/17/2012	43122956	5/16/2013	43133868	Automatic	43133868	Automatic	43133868
1578413	2870 N State Hwy	5/5/2011	Packet	6/3/2011	3/19/2012	11/28/2012	5/15/2014	4/20/2012	43123442	5/16/2013	43133868	Automatic	43133868	Automatic	43133868
1578414	Tyler #4	5/5/2011	Packet	6/3/2011	6/19/2012	1/25/2013	4/22/2014	4/17/2012	43122955	5/16/2013	43133868	Automatic	43133868	Automatic	43133868
1578415	Tyler #2	5/5/2011	Packet	6/3/2011	3/19/2012	2/27/2013	5/6/2014	4/20/2012	43122997	5/16/2013	43133868	Automatic	43133868	Automatic	43133868
1578416	Tyler #3	5/5/2011	Packet	6/3/2011	3/19/2012	2/27/2013	5/6/2014	4/20/2012	43123239	5/16/2013	43133868	Automatic	43133868	Automatic	43133868
1578417	University Blvd*	5/5/2011	Packet	6/3/2011	3/19/2012	11/28/2012	3/11/2015	4/20/2012	43123236	5/16/2013	43133868	5/29/2014	43144511	Automatic	43144511
1578418	Tyler #5	5/5/2011	Packet	6/3/2011	7/25/2012	3/11/2013	5/6/2014	4/17/2012	43122995	5/16/2013	43133868	5/29/2014	43144511	Automatic	43144511
1578419	Tyler #1	5/5/2011	Packet	6/3/2011	3/19/2012	2/27/2013	3/2/2013	4/20/2012	43123237	Automatic	43123237	Automatic	43123237	Automatic	43123237
1578420	Nacogdoches	5/5/2011	Packet	6/3/2011	4/10/2012	9/1/2012	6/5/2013	4/20/2012	43123240	Automatic	43123240	Automatic	43123240	Automatic	43123240
1578421	Carthage	5/5/2011	Packet	6/3/2011	8/28/2012	1/7/2014	4/27/2016	4/17/12 & 3/29/2013	43122955 & 43127870	5/16/2013	43133868	5/29/2014	43144511	6/1/2015	43155655
1580115	Kaufman	5/5/2011	Packet	6/3/2011	10/5/2012	5/10/2013	N/A	4/17/2012	43122955	5/16/2013	43133868	5/29/2014	43144511	6/1/2015	43155655
* Street address remained by the city after site was contracted															
ANDREWS	#34447														
FRN	SITE	Initial 465 Filed FY 2013	Form 465 # FY 2013	Initial ACSD	Contract Signed	Install Date	Evergreen	2nd 465 Filed FY 2014	Form 465 # FY 2014	3rd 465 Filed FY 2015	Form 465 # FY 2015	Notes			
157503	Canton Clinic	12/13/2013	43139560	1/15/2014	3/20/2014	3/19/2015	6/30/2015	5/29/2014	43144507	6/2/2015	43155889	Evergreen from 2014 filing after 2015 open bid			
1578408	Athens Clinic	12/13/2013	43139560	1/15/2014	3/20/2014	3/19/2015	6/30/2015	5/29/2014	43144507	6/2/2015	43155889	Evergreen from 2014 filing after 2015 open bid			
1578409	Mineola Clinic	12/13/2013	43139560	1/15/2014	3/20/2014	3/19/2015	6/30/2015	5/29/2014	43144507	6/2/2015	43155889	Evergreen from 2014 filing after 2015 open bid			
1578410	Tyler Main (2323 Front St)	12/13/2013	43139560	1/15/2014	3/20/2014	3/19/2015	6/30/2015	5/29/2014	43144507	6/2/2015	43155889	Evergreen from 2014 filing after 2015 open bid			
1584974	Tyler Diverse Route (2323 Front St)	N/A	N/A	6/30/2015	8/19/2015	4/28/2016	N/A	N/A	N/A	6/2/2015	43155889				

BURKE CENTER (HCP #33148)

EXHIBITS B - D



Gary Speck <gary@abstelecom.net>

Re: Recent USAC Form 465 - HCP # 33149 / The Burke Center - West Austin Street - Service Information Request From Rural Health Telecom - Texas

1 message

Gary Speck <gary@abstelecom.net>
To: Reid Freeman <RFreeman@ruralhealthtelecom.com>

Thu, Sep 5, 2013 at 11:43 AM

Thank you for your email. attached to this email response .

1. location list
2. service requested
3. selection criteria
4. 60 month term is preferred

On Thu, Sep 5, 2013 at 10:27 AM, Reid Freeman <RFreeman@ruralhealthtelecom.com> wrote:

Gary: I am contacting you in order to get information regarding The Burke Center's Internet/data network that you have now and your recent filing of the Form 465 from the Federal USAC funding website... We would like to have the opportunity to propose our network services for your network. As a brief introduction, we are a service company that provides Internet service, data networking service, and telecom services only to health care providers that have some or all of their locations located in rural areas. We help these HCPs obtain the lowest funded price for the qualifying network services in each particular state through the Rural Health Care program. My company, Rural Health Telecom, is the leading provider of network services to health care providers located in rural locations in the continental US.

I would like to obtain some more detailed information in order to provide a proposal for the recently filed Form 465 for the following:

HCP #s: 33149
HCP Name(s): The Burke Center
Posting Date: August 30, 2013
ACSD: September 27, 2013

If possible, I would like to have any specific information that you can provide on what the desired services for this funding year, BY LOCATION (if possible) including:

1. Circuit/Service information: type of circuit(s), location(s)/address(es) of circuit(s), bandwidth of each circuit, any special features like MPLS
2. Agreement information: term of agreement desired, installation date
3. Decision/Evaluation criteria, if known:
4. Network Diagrams, if any: would like a current diagram (without confidential information) and future diagram, if it exists
5. Customer specific or other helpful information: need router(s), any special hardware requirements

If it's easier to discuss via telephone, just let me know as I will get my Engineer to discuss with us...

Thanks...

Reid Freeman

Regional Account Manager

Rural Health Telecom

210.730.4250 (cell)

rffreeman@ruralhealthtelecom.com

www.ruralhealthtelecom.com



—
Gary Speck
Business Development
O) 972-407-0063
G) 972 383-9227
F) 214-291-5901
Gary@abstelecom.net
www.abstelecom.net

 **RHC_sitelist_CROCKETT_2013.pdf**
179K



Gary Speck <gary@abstelecom.net>

**Re: USAC 465 - 33149 The Burke Center - West Austin Street TX 08/30/2013
09/27/2013**

1 message

Gary Speck <gary@abstelecom.net>
To: Brooke Wickham <BrookeWickham@networkservices.org>

Tue, Sep 3, 2013 at 7:32 PM

Thank you for your email. attached to this email response .

1. location list
2. service requested
3. selection criteria
4. 60 month term is preferred

On Tue, Sep 3, 2013 at 3:58 PM, Brooke Wickham <BrookeWickham@networkservices.org> wrote:

Hello Gary,

We have reviewed your 465 posting and are interested in submitting a bid. Can you please clarify a few connectivity specifics in regards to this 465 posting?

Will you be using WAN connections or single site Internet Connectivity, for the services related to this posting?

If you are implementing a Wide Area Network, could you please provide the telephone number and address for each end point, as well as the type of connectivity you require between the locations?

For single site Internet Connectivity, can you please clarify if each location that requires the connectivity (address and phone#) is the same as the address listed on the application, as well as the bandwidth and connection types?

Thank you,
Brooke

Brooke Wickham
Account Executive



800-726-2575 - Scott - Major Account Executive in Bid Department
Spin # 143029752

Network Services is an ETP (Eligible Telecommunications Provider) in good standing with USAC. We are a direct contributor to the Universal Service Fund. Our goals are met by providing high quality telecommunications and internet services, through each of the major carriers and tier one internet providers, at deeply discounted rates.

The integrity of our company lies within the dedication of quality services and satisfaction that we continually strive to provide our clients.

--
Gary Speck
Business Development
O) 972-407-0063
G) 972 383-9227
F) 214-291-5901
Gary@abstelecom.net
www.abstelecom.net

 **RHC_sitelist_CROCKETT_2013.pdf**
179K

Exhibit D

A location		NPA/NXX		Z Location	NPA/NXX	
1401 W. Austin	Crockett TX 75835	936-243	2003 S. Medford Dr. Lufkin TX 75901		936-639	
1401 W. Austin	Crockett TX 75835	936-243	1915 Old Mill Road Lufkin Tx 75904		936-639	
1401 W. Austin	Crockett TX 75835	936-243	11937 US Hwy 271, Tyler TX 75708		903-877	
1401 W. Austin	Crockett TX 75835	936-243	2704 Homer Alto Rd Lufkin Tx 75904		936-634	
1401 W. Austin	Crockett TX 75835	936-243	2105 N. John Redditt Lufkin Tx 75904		936-639	
1401 W. Austin	Crockett TX 75835	936-243	15544 FM 777 Jasper TX 75951		409-224	
1401 W. Austin	Crockett TX 75835	936-243	1100 Ogletree Drive Livingston TX 77351		936-327	
1401 W. Austin	Crockett TX 75835	936-243	583 El Camino Crossing San Augustine TX 75972		936-275	
1401 W. Austin	Crockett TX 75835	936-243	105 Mayo Place Lufkin, TX 75904		936-674	
1401 W. Austin	Crockett TX 75835	936-243	910 S. Margaret Kirbyville, TX 75956		409-423	
1401 W. Austin	Crockett TX 75835	936-243	5001 Lotus Lane, Lufkin, TX 75904		936-634	
1401 W. Austin	Crockett TX 75835	936-243	1718 South University Drive Nacogdoches, Texas 75961		936-569	
1401 W. Austin	Crockett TX 75835	936-243	4632 NE Stallings Drive, Nacogdoches, Texas 75965		936-558	
1401 W. Austin	Crockett TX 75835	936-243	1936 North St. Nacogdoches, TX 75962		936-468	
Service requested						
dedicated, fiber-optic, point-to-point gigabit Ethernet service						
Selection Criteria						
<input checked="" type="checkbox"/> Cost <input checked="" type="checkbox"/> Reliability <input checked="" type="checkbox"/> Quality of transmission <input checked="" type="checkbox"/> Responsiveness <input checked="" type="checkbox"/> Features <input checked="" type="checkbox"/> Ability to bid on entire network <input checked="" type="checkbox"/> Personnel and management <input checked="" type="checkbox"/> Agreement to apply timely discounts <input checked="" type="checkbox"/> Technical support <input checked="" type="checkbox"/> Previous experience with vendor <input checked="" type="checkbox"/> Single point of contact						

TRINITY VALLEY COMMUNITY COLLEGE (HCP #26649)

EXHIBITS E - J



Gary Speck <gary@abstelecom.net>

Re: Response to HCP #26649

On Fri, May 6, 2011 at 11:54 AM, Gary Speck <gary@abstelecom.net> wrote:

Attached is the site list.

in your quote include:

Full contract

urban rate

all locations must be bid

spin number

On Fri, May 6, 2011 at 10:51 AM, Joey Sutton <jsutton@ustelecomgroup.com> wrote:

Gary,

I'm one of the owners of US Telecom Group (USTG). USTG is one of seven US own outsourced authorized representatives of multiple carriers across the US. USTG has 822 schools across the US as we have been working with the school since 2000. We have 39 hospitals with 180 locations across the US. USTG has only been outsourced for two year in the RHC field. Before 2009 the carriers outsourced the representation over seas.

When you post your 465: If a carrier sees this and they are interested they send us an email to reach out to you. In this case it was an ATT wholesaler out of NC. From there we have 48 hours to reach out to you and see if you are interested in receiving bids and if moving to a new carrier isn't out of the question.

If you are interest we then are responsible to gather all your information and load it into our system. Our system then goes out to see which of the 63 carriers matches up or are running promotions for your locations.

Then they submit a quote document to us and we submit it to you.

The benefits you receive by this process are that you will get the best price from the carrier you can. It

is less expensive for the carrier to have USTG do the work than to hire 7 people and pay them a salary, insurance, benefits and commission. All quotes USTG receives are filed and logged.

Please feel free to call me in the office if you would like to speak to me about this. There is zero cost for you the carriers pay our fees.

Thank you

Joey Sutton | Co-Founder | US Telecom Group

Desk 413-304-4212 | Fax 866-358-5552

From: Jenny [mailto:JBurgos@ustelecomgroup.com]
Sent: Friday, May 06, 2011 2:18 PM
To: 'Gary Speck'
Cc: 'Joey Sutton'
Subject: RE: Response to HCP #26649

Hi Gary,

Your form 465 was posted on the USAC website yesterday. One of my AT&T wholesalers contacted me as they are interested in bidding for your services. Our local address is located at 165 Front St. Chicopee, MA 01013.

Thank you,

Jenny Burgos

Rural Health Care Specialist

US Telecom Group

(413) 304-4202-Voice

(866)358-5552-Fax

On Fri, May 6, 2011 at 10:34 AM, Jenny <JBurgos@ustelecomgroup.com> wrote:

Hi,

US Telecom Group (USTG) received an update that you have filed your forms 465 for the 2010-2011 funding year.

US Telecom Group are agents for multiple carriers for all form of telecommunications and internet access. I have attached a file that lists out carriers US Telecom Group represents.

Through the carriers US Telecom Group would like to bid on your services requested on your form 465 however we need a little more information to properly bid on your request.

Please contact me at your earliest convenience to discuss your form 465 requirements.

Thank you,

Jenny Burgos

Rural Health Care Specialist

US Telecom Group

(413) 304-4202-Voice

(866)358-5552-Fax

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Gary Speck
Business Development
O) 972-407-0063
F) 214-291-5901

Gary@abstelecom.net
www.abstelecom.net

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Gary Speck
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Gary@abstelecom.net
www.abstelecom.net

 **ETIHN Site Information 05052011.pdf**
152K



Exhibit F

Gary Speck <gary@abstelecom.net>

Re: FW: Tel West response to RFP for USAC form 465 number 47032

1 message

Gary Speck <gary@abstelecom.net>

Fri, May 20, 2011 at 12:55 PM

To: Darlene Flournoy <darlene.flournoy@netnet.org>

Thank you Darlene. We have spoken and he has the site list for design. I hope we have some pricing and contracts for review soon.

On Fri, May 20, 2011 at 12:07 PM, Darlene Flournoy <darlene.flournoy@netnet.org> wrote:

Gary – Benjamin Baird just called me. He wanted your number but I asked him for his instead. He was requesting information about the sites. His number is 972.999.6828. Thanks!

From: Benjamin Baird [mailto:BBaird@telwestservices.com]

Sent: Friday, May 20, 2011 8:51 AM

To: Darlene Flournoy

Subject: Tel West response to RFP for USAC form 465 number 47032

Darlene Flournoy–

Good morning my name is Benjamin Baird and I am a Special Projects Account Executive with Tel West Network Services. So far in 2011 Tel West has been awarded 37 projects with USAC funding. Tel West would like an opportunity to respond to the Universal Service Administrative Company (USAC) Rural Health Care form 465 number 47032 you have submitted.

Trinity Valley Community College	47032	100 Cardinal Drive
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Tel West has earned a strong reputation built on customer satisfaction. Government, Business's & Municipalities rely on their Tel West team to support their infrastructure with scalable, reliable & cost-effective communication solutions to help them succeed in today's competitive marketplace. Tel West's keen focus on flawless execution and superior customer service is what sets us apart from any partner in the marketplace.

Today, companies like the Texas Rangers & Dallas Stars, Arlington ISD, FAA, Texans Can Academy, Better Business Bureau, & The City of Corpus Christi have all chosen Tel West.

Our Synchronous Optical Network (SONET), including more than 12,000 fiber miles of high capacity fiber optics assures our clients a robust, reliable and scalable network for all your

communications needs.

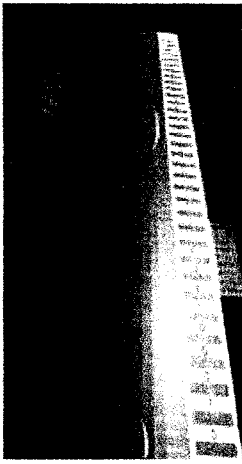
Infrastructure Highlights:

- Synchronous optical network (SONET)
- Fiber Optic Infrastructure is equipped with 14,000 fiber miles (11,811 owned)
- MPLS backbone
- Ethernet enabled platform
- Point-to-Point circuits
- Multi-level hierarchy of connectivity architecture
- High-speed, redundant routers and switches
- TDM & Next Generation Soft Switches
- Products include DS-1, DS-3,T-1, T-3, OC-1, PRI, SIP, and Hosted VOIP

Quick Facts

Headquarters	Austin, TX
Year Incorporated	1998
Markets	Texas
Access Lines	300k +
Customers	6,000 +
Fiber Miles	12,000 +

#8 Top Growth Company (w/revenues over \$25Mil.) in Central TX by The Austin Business Journal 2010.



Communications is the breath of business.

Let Tel West help you breathe easier.

Tel West Network Services

Benjamin Baird | Account Executive
direct 972-354-4410 | fax 972-354-4488

email bbaird@telwestservices.com | web www.telwestservices.com

CONFIDENTIALITY NOTICE: This message is intended only for the individual or entity to which it is addressed and may contain information that is confidential or exempt from disclosure under applicable law. If you are not the intended recipient, you have received this communication in error. In such case, please notify us immediately by reply e-mail and immediately delete this message and its attachments. Any use, dissemination, redistribution or reproduction of this communication is strictly prohibited. Unless the message explicitly states otherwise, no e-mail correspondence claims to be a contractual offer or acceptance. Tel West has instructed its employees not to send libelous or inappropriate statements and disclaims responsibility for such. Subject to applicable law, Tel West may monitor, review and retain e-communications traveling through its networks/systems. By messaging with Tel West you consent to the foregoing.

--
Gary Speck
Business Development
O) 972-407-0063
F) 214-291-5901

Exhibit G

Site Name	Address	Service
UT Health at Tyler	11937 US Hwy 271 Tyler, TX 75708 903 677 1200 www.uthtet.org	3 g/g
Algore College	1100 Broadway Algore, TX 75602 903 964 5311 www.algore.edu	1 g/g
SFA Nacogdoches	1936 North Street Nacogdoches, TX 75962 936 468 1401 www.sfaa.edu	1 g/g
Angelina College	3500 South First Street Lufkin, TX 75904 936 689 1301 www.angelina.edu	1 g/g
Panola College	1109 W. Panola Carthage, TX 75633 903 693 2000 www.panola.edu	1 g/g
East Texas Interactive Healthcare Network- Marshall	2400 East End Blvd. Marshall, TX 75672 903 935 1010 www.marshall.tti.edu	1 g/g
Tyler Jr. College	1327 South Baxter Avenue Tyler, TX 75701 903 510 3200 www.tjc.edu	1 g/g
UT Tyler	3900 University Blvd Tyler, TX 75799 903 566 7000 www.uttyler.edu	1 g/g
Northeast Texas Community College	2886 FM 1735 Chapel Hill Road Mt. Pleasant, TX 75455 903 434 8100 www.ntcc.edu	1 g/g
Paris Jr. College	2400 Clarksville Street Paris, TX 75460 903 785 7661 www.parisjc.edu	1 g/g
TAMU Commerce	2800 W. Neal Street Commerce, TX 75428 903 886 5000 www.tamuc-commerce.edu	1 g/g
TexasA&M College TAMU TexasA&M - South Campus	2500 N. Robinson Road TexasA&M, TX 75799 903 836 4541 www.texasamcollege.edu www.tamuc.edu	1 g/g
TAMU TexasA&M	7101 University Ave TexasA&M, TX 903 223 3000 www.tamuc.edu	1 g/g
Trinity Valley Community College This is the HUB location This must be the A location on all quotes	100 Cardinal Drive Athens, TX 75751 903 675 6200 www.tvcc.edu	Hub location 1 g/g of Internet
TVCC - Palestine	2970 North State Hwy, 19 Palestine, TX 75802 903 729 0256 http://www.tvcc.edu/campus	1 g/g
UT Tyler - Palestine	Loop 256 & Hwy 287/19 North Palestine, TX 75803 903 727 3300 www.uttyler.edu/palestine	1 g/g
Trinity Valley Community College Turrell	1200 East Hwy. 36 Turrell, TX 75160 972 563-9579 800 Hwy 243 W234 Kaufman, Texas 75142 Ph. 972-932-4309	1 g/g
Trinity Valley Community College - Health Science Center		1 g/g



Re: Rural Health Care- Form 465 Application

Gary Speck <gary@abstelecom.net>

To: "Danzey, Oscar" <ODanzey@corp.earthlink.com>

On Wed, May 9, 2012 at 10:42 AM, Danzey, Oscar <ODanzey@corp.earthlink.com> wrote:

Gary,

I am sending this correspondence as I would like to speak with you about the service requirements listed within your recently filed Form 465 for the Health Care Providers Universal Service funding under HCP number: 26649 for Trinity Valley Community College posted on 04/25/2012. I would like to obtain a better understanding for your requirements so I can then prepare a competitive proposal for your service needs. Please let me know if the opportunity permits for a brief call to converse further or if any RFP documents are available.

I look forward to hearing from you.

Sincerely,

OJD

Oscar J Danzey

Strategic Account Executive

EarthLink Business

E: odanzey@corp.earthlink.com

O: 201-623-1909 | M: 201-780-7878 | F: 866-274-4158

160 Chubb Ave | Lyndhurst, NJ | 07071

www.earthlinkbusiness.com

Gary Speck
Business Development
O) 972-407-0063
F) 214-291-5901
Gary@abstelecom.net
www.abstelecom.net



Gary Speck <gary@abstelecom.net>

Re: USAC 465 - 26649 Trinity Valley Community College TX 05/16/2013 06/13/2013

1 message

Gary Speck <gary@abstelecom.net>

Fri, May 24, 2013 at 6:25 AM

To: Brooke Wickham <BrookeWickham@networkservices.org>

Brooke,

Attached to this email is the site list

On Thu, May 23, 2013 at 12:14 PM, Brooke Wickham <BrookeWickham@networkservices.org> wrote:

Dear Gary,

We have reviewed your 465 posting and are interested in submitting a bid. Can you please clarify a few connectivity specifics in regards to this 465 posting?

Will you be using WAN connections or single site Internet Connectivity, for the services related to this posting? WAN connections

If you are implementing a Wide Area Network, could you please provide the telephone number and address for each end point, as well as the type of connectivity you require between the locations? yes

For single site Internet Connectivity, can you please clarify if each location that requires the connectivity (address and phone#) is the same as the address listed on the application, as well as the bandwidth and connection types? Not applicable

Thank you,
Brooke

Brooke Wickham
Account Executive



800-726-2575 - Scott - Major Account Executive in Bid Department
Spin # 143029752

Network Services is an ETP (Eligible Telecommunications Provider) in good standing with USAC. We are a direct contributor to the Universal Service Fund. Our goals are met by providing high quality telecommunications and internet services, through each of the major carriers and tier one internet providers, at deeply discounted rates.

The integrity of our company lies within the dedication of quality services and satisfaction that we continually strive to provide our clients.

--

Gary Speck
Business Development
O) 972-407-0063

G) 972 383-9227
F) 214-291-5901
Gary@abstelecom.net
www.abstelecom.net



ETIHN_SiteLIST_2013.pdf

139K

Exhibit J

A location	NPA/NXX	Z Location	NPA/NXX
100 CARDINAL DR ATHENS TX 75751	903/675	1109 W PANOLA, CARTHAGE TX 75633	903/693
100 CARDINAL DR ATHENS TX 75751	903/675	2100 SOUTH LOOP 256, PALESTINE, TX 75801	903/727
100 CARDINAL DR ATHENS TX 75751	903/675	2970 N STATE HWY 19, PALESTINE, TX 75802	903/729
100 CARDINAL DR ATHENS TX 75751	903/675	100 UNIVERSITY BLVD, PALESTINE, TX 75801	903/727
100 CARDINAL DR ATHENS TX 75751	903/675	11937 US HWY 271, TYLER, TX 75708	903/877
100 CARDINAL DR ATHENS TX 75751	903/675	1936 NORTH STREET, NACOGDOCHES TX 75965	936/468
100 CARDINAL DR ATHENS TX 75751	903/675	3500 SOUTH FIRST ST, LUFKIN TX 75904	936/633
100 CARDINAL DR ATHENS TX 75751	903/675	800 TEXAS 243, KAUFMAN TX 75142	972/932
100 CARDINAL DR ATHENS TX 75751	903/675	3600 Loop 500 E, Center, TX 75935	936/598
100 CARDINAL DR ATHENS TX 75751	903/675	805 North Dickinson, Rusk Tx 75785	430/971

Service requested
dedicated, fiber-optic, point-to-point gigabit ethernet service 60 month term
Selection Criteria

- Cost
- Reliability
- Quality of transmission
- Responsiveness
- Features
 - Must bid on all listed circuits
 - Personnel and management
 - Agreement to apply timely discounts
 - Technical support
 - Previous experience with vendor
 - Single point of contact
 - Quote must include all Special Carrier Construction Charges
 - Budgetary quotes will not be accepted

ANDREWS CENTER (HCP #34447)

EXHIBITS K - L



Re: USAC 465 - 34447 The Andrews Center - East Lennon TX 12/18/2013 01/15/2014

1 message

Gary Speck <gary@abstelecom.net>

Fri, Dec 27, 2013 at 1:44 PM

To: Brooke Wickham <BrookeWickham@networkservices.org>

Brooke,.

attached to this email is site list and requirements , please read the entire document

On Fri, Dec 27, 2013 at 12:30 PM, Brooke Wickham <BrookeWickham@networkservices.org> wrote:

Hello Gary,

We have reviewed your 465 posting and are interested in submitting a bid.

Can you please clarify a few connectivity specifics in regards to this 465 posting?

If you are implementing a Wide Area Network, could you please provide the telephone number and address for each end point, as well as the type of connectivity you require between the locations?

Thank you,
Brooke

Brooke Wickham
Account Executive



800-726-2575 - Scott - Major Account Executive in Bid Department
Spin # 143029752

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Gary Speck
Business Development
O) 972-407-0063
G) 972 383-9227
F) 214-291-5901
Gary@abstelecom.net
www.abstelecom.net

Tyler-Main Center

2323 West Front St. (Hwy. 31)
Tyler, TX 75702
903/216

Athens Clinic

6901 Highway 19 South
Athens, TX 75751
903/275

Mineola Clinic

703 West Patten
Mineola, TX 75773
430/980

Canton Clinic

575 W. Highway 243
Canton, TX 75103
903/502

HUB LOCATION

Emory Clinic

1174 East Lennon
Emory, TX 75440
903/308

Service requested
dedicated, fiber-optic, point-to-point gigabit Ethernet service

Selection Criteria

- ü Cost
- ü Reliability
- ü Quality of transmission
- ü Responsiveness
- ü Features
- ü Ability to bid on entire network
- ü Personnel and management
- ü Agreement to apply timely discounts
- ü Technical support
- ü Previous experience with vendor
- ü Single point of contact